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ABSTRACT

This booklet, designed for use in secondary social studies classes and adult groups, explores the differing perspectives on the causes and prevention of violent crime. The problem, according to the first perspective, is that the sharp increase in crime is due to the absence of punishment. The most promising solution is to get tougher with all criminals, increase enforcement efforts, appoint tougher judges, impose longer jail sentences, and build more prisons. The second view of crime and punishment is that there needs to be an identification of the relatively small group of criminals who are high-rate offenders, and a recognition that in important ways they are not deterred by harsher prison sentences. Chronic offenders need to be taken off the streets. The third perspective proposes that it is necessary to look at the corrosive social and economic forces that lead to criminality and make a serious effort not just to contain crime, but to prevent it. Proponents of this position recognize that it is no small task to change the social and economic conditions which now provide a breeding ground for crime. As an immediate measure, alternatives to incarceration should be explored. If a society that is less dangerous, less fearful, and less torn by violence is to be built, the causes and prevention of crime must be considered. (SM)

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NATIONAL ISSUES FORUM

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Crime:

What We Fear, What Can Be Done

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As President Kennedy said, "To govern is to choose." The same thing might be said for every citizen in a democracy: to govern ourselves is to choose. But when you think about it, that is a very demanding expectation. Most conversations about public issues consist of little more than the airing of grievances, or comments from the sidelines on what elected leaders are doing — usually what they are doing wrong! It is not easy for most of us to understand important issues well enough to decide what is in the public interest. It is harder still to believe that anyone in public office is interested in hearing what we think and feel.

Yet, since it was formed five years ago, the Domestic Policy Association has been based on the conviction that citizens *can* engage in productive discussion about public issues and that elected leaders *are* interested in the outcome. The goal of these nonpartisan forums is to stimulate and sustain a special kind of conversation, a genuinely useful debate that moves beyond the bounds of partisan politics, beyond the airing of grievances to mutually acceptable responses to common problems.

The DPA represents the pooled resources of a nationwide network of organizations — including libraries and colleges, churches and membership groups, service clubs and community organizations. Last year, some 200 convening institutions in 46 states organized community forums as part of this effort called the National Issues Forum and we anticipate that those numbers will continue to grow. These are nonpartisan meetings in which citizens discuss specific policy issues. Each year, convenors choose three topics for discussion. There is an issue book like this one for each of them, designed to frame the debate by laying out the choices and their respective costs.

This year's topics — crime, immigration, and the farm crisis — pose a special challenge. Each of them provokes an emotional response. For that reason, discussion tends to generate more heat than light. With regard to all three topics, there are sharp differences about the diagnoses of the problems as well as prescriptions about what should be done. The only thing that people seem to agree upon is that current policies aren't working as well as they should. The challenge in these forums is to see if we can "work through" some of our differences to find the common ground on which more effective policies can be based.

This past March, President Gerald Ford hosted a meeting at which leaders and citizens sat down together to discuss the outcome of the 1985 forums. As the meeting began, he pointed out what is distinctive about these forums and why leaders are particularly interested in their outcome. "If citizens are to arrive at a conception of the public interest, it is essential that there be nonpartisan forums such as these in which people who may not agree with each other get together to exchange their views. It is essential for people to find a way of speaking to elected officials not as representatives of special interests but as individuals lobbying for the public interest. Elected leaders *are* interested in what people think, particularly when they've taken the time to learn about the issues and ponder the choices."

Soon after the 1986 forums end, the DPA will once again convene a series of meetings to convey the results to leaders. One of those meetings, to be held in Atlanta at the recently completed Jimmy Carter Presidential Library, will be hosted by President Carter. The discussion will begin with a summary of what took place in the community forums. To make sure that your thoughts and feelings are reflected in that report, we have provided short questionnaires at the beginning and end of this book. Before you begin reading these materials and then after you have read this book or attended community forums on this topic, take a moment to fill out these questionnaires and mail them back to us, or hand them to your forum moderator.

So as you begin this issue book from the Domestic Policy Association, you are joining thousands of Americans in the fifth annual season of the National Issues Forum. As the editor of these books, I am pleased to welcome you to this common effort.

Keith Melville
Editor-in-Chief
National Issues Forum

NATIONAL ISSUES FORUM

1. Crime: What We Fear, What Can Be Done

Before you read this book or attend the forums, please fill out this short questionnaire. We're particularly interested in how you change your mind on these questions once you've learned more about the issue and had a chance to think about it. So after the forums are over, or after you've finished reading this issue book, we'd like you to fill out a second short questionnaire which appears at the end of the book.

1. To what extent does each of the following contribute to the high rate of violent crime?

	Major Factor	Minor Factor	Not a Factor	Not Sure
a. Unemployment and poverty	☐	☐	☐	☐
b. The breakdown of family and social values	☐	☐	☐	☐
c. Light sentences for repeat offenders	☐	☐	☐	☐
d. Overburdened courts and prisons	☐	☐	☐	☐
e. Too few police	☐	☐	☐	☐

2. What priority should each of the following be given in the effort to control crime?

	High Priority	Lower Priority	Not a Priority	Not Sure
a. Make punishment swift and certain	☐	☐	☐	☐
b. Lock up the most dangerous criminals for longer periods of time	☐	☐	☐	☐
c. Address the root causes of crime, such as poverty, unemployment, and poor schools	☐	☐	☐	☐
d. Find alternatives to prison in order to teach valued job skills and attitudes to offenders	☐	☐	☐	☐

3. Which of these age groups are you in?

Under 18 ☐
18-29 ☐
30-44 ☐
45-64 ☐
65 and over ☐

4. Are you a

Man ☐
Woman ☐

5. What is your zip code? _____

So that we can report what you think on this issue to local and national leaders, please hand this questionnaire to the forum leader at the end of the session, or mail it to the National Issues Forum at 5335 Far Hills Avenue, Dayton, Ohio 45429.

NATIONAL ISSUES FORUM

Crime:

What We Fear, What Can Be Done

Prepared by the
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The Domestic Policy Association

The Domestic Policy Association is a nonprofit, nonpartisan association devoted to raising the level of public awareness and discussion about important public issues. It consists of a nationwide network of institutions — colleges and universities, libraries, service clubs, membership groups, and civic organizations — that bring citizens together to discuss public issues. The DPA represents their joint effort to enhance what they already do by working with a common schedule and common materials. In addition to convening meetings each fall in hundreds of communities in every region of the country, the DPA also convenes meetings at which it brings citizens and national leaders together to discuss these issues and the outcome of community forums.

Each year, participating institutions select the topics that will be discussed in the issue forums. On behalf of the Domestic Policy Association, the Public Agenda Foundation — a nonprofit, nonpartisan research and education organization that devises and tests new means of taking national issues to the public — prepares issue books and discussion guides for use in these forums. The Domestic Policy Association welcomes questions about the problem, and invites individuals and organizations interested in joining this network to write to: The Domestic Policy Association, 5335 Far Hills Avenue, Dayton, Ohio 45429.

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Various proposals about how to deal with crime suggest different approaches, and different uses of public resources. Which one reflects the various values we hold, including the value we place on our own safety?

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Criminal Violence, Criminal Justice

"People are angry about the threat posed by violent crime, and about a criminal justice system that seems incapable of maintaining the public order. There is little agreement, however, about what course of action should be taken to control crime."

The rate at which violent crime takes place in the United States today is a startling and sobering reminder of who we are as a people. Americans murder, assault, rape, and rob one another at rates far higher than citizens of other Western industrial nations. According to a report from the Justice Department, the chances of being a victim of violent crime over one's lifetime are greater than the risk of being hurt in a car accident, dying of cancer, or being injured in a fire. Even murder, the least frequent violent crime, is no rare occurrence. A recent ABC News survey found that one in twelve Americans had had a close relative murdered, and one in eight knew someone in the neighborhood who had been slain.

The risks of being a victim of violent crime are spread unevenly. Men, more often than women, are both the perpetrators and the victims of violent crime (except for rape). Those in low income neighborhoods are its most frequent victims, and blacks are more often involved than whites. For those living in inner-city ghettos, violent crime is a fact of daily life. Significantly, however, crime is no longer regarded by most Americans as something that happens to *other* people. Today, it is a fact of life for the wealthy as well as the poor. Though violent crime still takes place more frequently in urban areas, it is by no means confined to the cities.

When, in the early 1980s, the Justice Department reported a slight decline in crime rates for three successive years, that news was interpreted by some as evidence that the nation had "turned the corner" on the crime problem. Then, in April 1986, new figures showed that rates were up again for various types of crime, among them violent crime. People differ in the significance they attach to these fluctuations. But no one disputes the fact that crime rates have risen dramatically over the past two decades. Currently, the rate at which reported rape and robbery is committed is roughly three times what it was in 1964. Crime — and particularly violent crime, which is the topic of this discussion — pervades American life, and has caused changes, both subtle and dramatic, in the way people live their lives.

State of Siege

As shocking as they are, the statistics on victimization tell only part of the story. They are too abstract to convey the brutality and sense of violation that so much violent crime involves. In many parts of the country, including those formerly considered safe, stories are now routinely exchanged about crimes and criminals.

Within a period of just a few months, for example, the following incidents took place: in Fort Lauderdale, Florida, a bandit held up a church congregation in the midst of a worship service; in Los Angeles, 11 people died in various episodes of gang violence in a single weekend; in Illinois, armed robbers attacked two cars stopped on an interstate highway, robbing the

"Your honour, we find the defendant guilty, the court room jammed, the docket overloaded, the calendar crowded, the jails full, the system appalling, but, what can you do?"

© Punch/Rothco

occupants and killing a 12-year-old boy; in New York, youths robbed and beat participants in a charity walkathon in Central Park; several blocks away, just down the street from the mayor's mansion, a U.S. senator and his companion, on their way to dinner with the mayor, were mugged by two men. Similar stories — and worse — are heard throughout the country. Incidents like these inspire both fear and anger in a population that increasingly feels besieged.

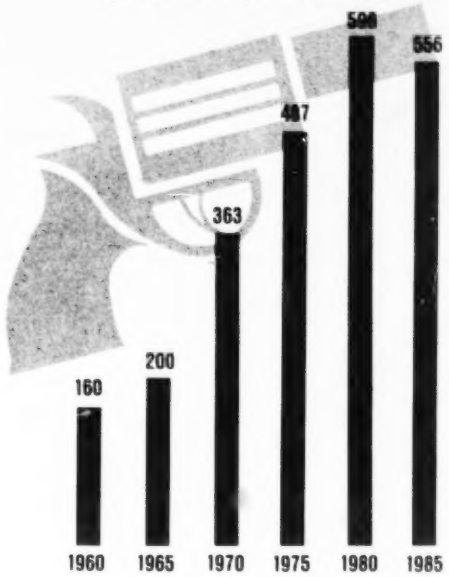
A recent Gallup poll shows that 45 percent of the American public — and a remarkable 76 percent of women living in urban areas — are afraid to walk at night in the neighborhoods where they live. Almost half of all Americans, according to an NBC survey, believe that they are in greater danger from serious crime than they were three years ago. Not surprisingly, the level of fear is greatest in the major cities. But 46 percent of the people living in the suburbs said they, too, felt more fearful than they had three years ago.

Along with fear, there is anger about what people regard as a growing wave of lawlessness that has an increasingly violent edge. In Miami, which has one of the highest homicide rates of any American city, concern about lawlessness has fueled public demands for a crackdown on crime and criminals. As Richard Capen, publisher of the *Miami Herald*, puts it, "None of us is prepared to live in constant fear, with anarchy everywhere — stalking our expressways, our homes, our streets, our shopping centers."

As concern over crime has risen, confidence in the ability of public authorities to combat it has declined. People are angry not only about the threat that violent crime poses to their safety and peace of mind, but also about a criminal justice system that seems incapable of carrying out its responsibility to maintain the public order. *Reader's Digest* carries a regular feature entitled "Crime and (Non)Punishment," a compilation from newspapers of instances in which the criminal justice system

Violent Crime Has Tripled Over the Past Generation

(Violent crimes per 100,000 people)

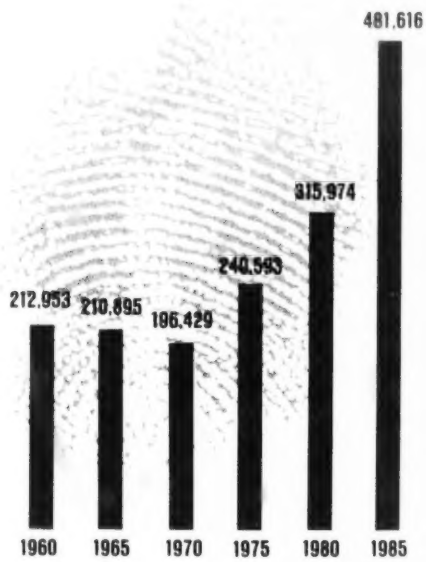


These figures reflect only crimes that are reported to the police.

Source: U.S. Department of Justice, Federal Bureau of Investigation

The Prison Population Has More Than Doubled

(Prisoners in State and Federal Institutions)



Source: U.S. Department of Justice, Bureau of Justice Statistics.

has failed. A recent *New York Times* poll found that among those who had been recent victims of crime, just one in ten said that the perpetrator had been captured by police.

The public is even more dissatisfied with the courts. In recent years, the proportion of Americans who feel that the courts are failing to do their jobs has risen steadily. In 1967, according to Harris polls, 52 percent of Americans believed that the courts were too lenient with criminals. By 1984, 83 percent shared that judgment. Indeed, recent polls show that a majority agrees that judges seem to have more sympathy for criminals than for their victims, and also that permissiveness of the courts is now a major cause of the country's problems.

Vigilante Justice

In December 1984, an incident on a New York subway provided a remarkable demonstration of the public's frustration about crime. Four teenagers approached 37-year-old Bernhard Goetz, a quiet and unassuming electronics technician, and demanded five dollars. Goetz had been robbed before and wasn't going to let it happen again. He was carrying a gun loaded with dum-dum bullets designed to inflict serious bodily damage — a gun for which he had no legal permit. Though none of the young men had directly threatened him, Goetz pulled out that pistol and shot each of them — two in the back — before fleeing.

By the time Goetz turned himself in several days later, the case had attracted nationwide attention, and provoked an outpouring of public support for his action. Opinion polls found that about 60 percent of the public supported his action. One enterprising supporter painted a crudely lettered message along the East River Drive which read "Power to the Vigilante. New York loves ya!" A majority of Americans seemed willing to overlook the fact that Goetz had not been directly threatened, that he had no legal permit for the gun, and that, as a result of his actions, one of the young men would remain paralyzed for life.

To many, Goetz was a hero, the avenger who did what the police and the court system together seemed unable to do. They saw in Goetz's action a sort of rough and ready criminal justice system, and seemed untroubled by the precedent it set for other would-be vigilantes. Various commentators spoke approvingly of what he had done, and enjoined urban dwellers to adopt the tough attitudes of an embattled population.

To others, such as attorney David Bruck, the outpouring of support for Goetz is a symptom of something gone seriously wrong. "The signs of collapse are everywhere," writes Bruck, "in the outpouring of support for Bernhard Goetz, in the huge boom in private security, in the pervasiveness of fear in city streets after dark. Fear of crime is becoming a constant in American life, and beneath the fear is bewilderment and rage. It isolates and embitters us, and frays the bonds that keep our society intact."

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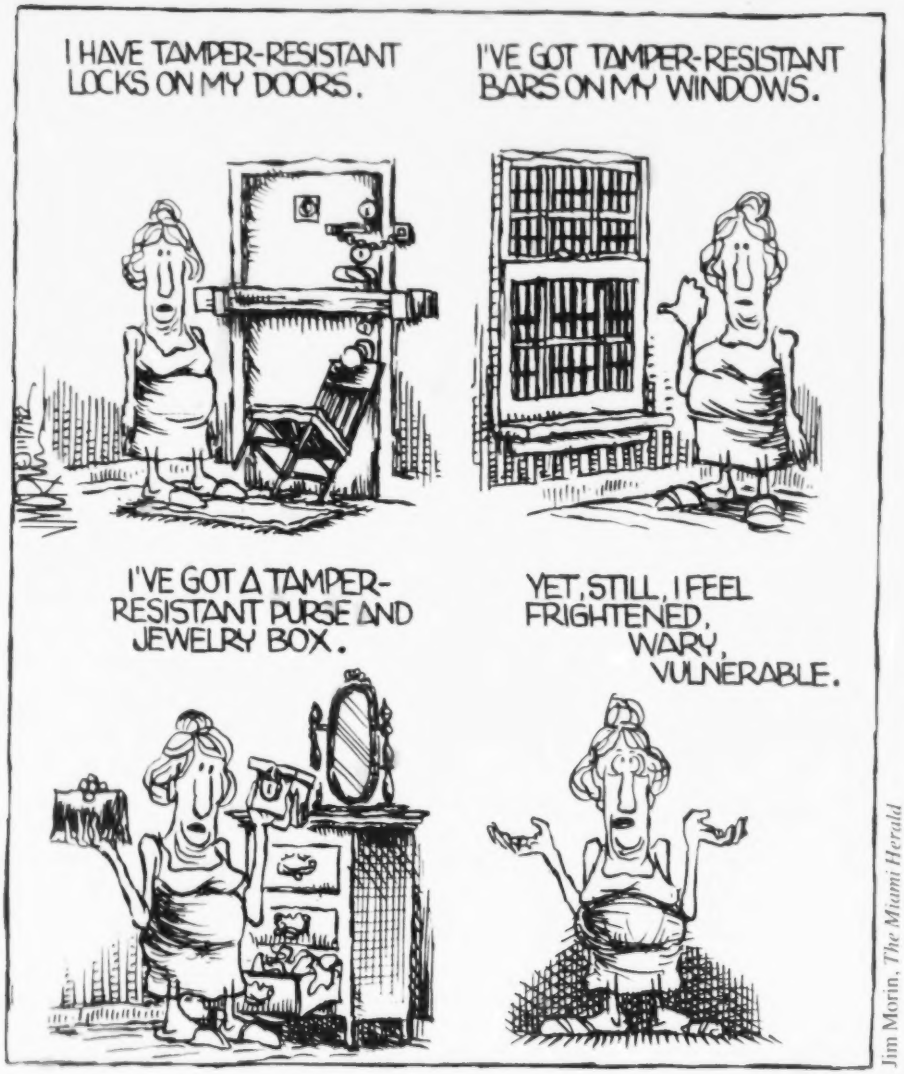
I HAVE TAMPER-RESISTANT LOCKS ON MY DOORS.
I'VE GOT TAMPER-RESISTANT BARS ON MY WINDOWS.
I'VE GOT A TAMPER-RESISTANT PURSE AND JEWELRY BOX.
YET, STILL, I FEEL FRIGHTENED, WARY, VULNERABLE.

Jim Morin, *The Miami Herald*

The Cause and Prevention of Violent Crime

It is especially disturbing that this nation's failure to make much progress against violent crime has occurred despite a concerted attempt to control it. According to a March 1986 survey by the Department of Justice, one-third of all American households now have burglar alarms, participate in a neighborhood crime watch program, or engrave their valuables with an identification number to assist in recovery if they are stolen. There has also been rapid growth in the home security business, which installs not only burglar alarms but protective bars on doors and windows to prevent thieves from entering.

The most prominent effort to deal with crime involves protective bars designed to keep criminals in rather than out. In 1970, there were almost 200,000 inmates in state and federal prisons. Since then, that number has increased to about 500,000. In short, the prison population has more than doubled over the past 15 years. Yet the rate at which violent crime is committed is now substantially higher.

Most Americans are agreed about one thing: *something* should be done about violent crime. But what? If we are to move beyond a bitter and visceral response to crime — one that expresses our frustration with what has been happening more than our considered judgment about what should happen — we will have to engage in a more coherent debate about crime, its causes and possible remedies. The disparity between efforts to control the crime problem and the results suggests that something is wrong with the way we have been dealing with the problem. But there is no agreement about what seems promising or how we might do better.

Asay, *Colorado Springs Sun*

"The proportion of Americans who feel that the courts are failing to do their job has risen steadily. A majority now agrees that permissiveness of the courts is a major cause of the country's problems."

What Should Be Done?

A lack of consensus about what to do is evident in a great many discussions about crime and punishment. If you doubt this, attend a city council meeting on the police budget, a legislative debate on the criminal laws, or a convention of judges discussing sentencing. There are real differences about the purpose of incarceration, and about what principle — deterrence, rehabilitation, or retribution — should guide the sentencing decision. There are differences, too, about what is most likely to keep first-time offenders from becoming career criminals. Some people advocate stiffer sentences, the denial of parole, or other measures intended to segregate criminals from the law-abiding majority; others favor increased efforts to provide young offenders with productive jobs, and additional measures to reintegrate them into the community.

If our objective is to agree upon a coherent anti-crime strategy, public debate has to reflect several goals, among them the importance we attach to civil liberties and the guarantee of a fair trial, as well as the importance we attach to stopping crime. And we will have to confront some tough questions about what has worked and what has not. Do stiffer prison sentences deter crime? Do job programs or improved education keep youths out of trouble? Can those who commit serious crime be rehabilitated?

With regard to each of these matters, criminologists and law enforcement experts have something to tell us. Fundamentally, however, this is not a debate that will be resolved by additional facts, nor by experts. What seem at first to be technical arguments about what can be done to deter crime often turn out to be moral or political arguments about what should be done. It is not sufficient, in other words, to be well informed about what has worked, and what hasn't. The essential issue is what we should *do*, and that decision should be informed mainly by a sense of what is right — which is a matter of judgment that requires collective deliberation and decision.

The crime problem has many aspects, and no brief discussion can hope to encompass more than a part of it. Accordingly, this issue book is not a comprehensive treatment on crime in its various manifestations, but a more narrowly focused discussion of violent crime. For present purposes, we have chosen to set aside other types of crime such as white-collar crime and organized crime, which are quite different phenomena and may

not respond to the same remedies. So, too, have we chosen to avoid related issues such as gun control, capital punishment, and drug-related crime, each of which deserves a separate discussion.

Three Choices on Violent Crime

There are various perspectives on violent crime, and a wide range of opinion about how best to deal with the problem. But these views tend to form three different positions. At the heart of the debate over crime and punishment are several distinctive views about why people commit crime, whether deterrence works, what part of the criminal justice system most needs improvement, and how criminals should be sentenced.

From the first perspective we shall examine, the problem is that American society has been too lenient with those who break the laws. Accordingly, the most promising solution is to get tougher with *all* criminals, to step up enforcement efforts, appoint tougher judges, impose longer jail sentences, and build more prisons.

Then, we shall examine a second view of crime and punishment. From this perspective, the first thing that should be done to control violent crime is to identify that relatively small group of criminals who are high-rate offenders, and recognize that in important ways they are not deterred by harsher prison sentences. The only realistic way to deal with such chronic criminals is to acknowledge that they are incorrigible. Considering the threat they pose to society, they should be locked up indefinitely.

Finally, we shall consider a third perspective on why some people commit crimes and what should be done with them. From this perspective, it is essential to recognize the corrosive social and economic forces that lead to criminality, and make a serious effort not just to contain crime, but to prevent it. Proponents of this position recognize that it is no small task to change the social and economic conditions which now provide a breeding ground for crime. As an immediate measure, alternatives to incarceration should be explored, alternatives which promise to help offenders return to productive lives.

Each of these perspectives begins with a distinctive explanation of why people commit crime. No prescription is likely to be effective if it is based upon an inaccurate diagnosis. It may be that our efforts to fight crime have been based upon a wrong understanding of its causes. If the diagnosis is wrong, we end up at best treating symptoms, not causes. So this is where the discussion begins, with an exchange of views about why people commit crimes.

But it is important that public debate about violent crime not end there. This is a discussion about what should be done to combat crime. If we are to build a society that is less dangerous, less fearful, less torn by violence, we will have to do something. But what? That is the topic of the debate.

"At the heart of the debate over crime and punishment are differing views about why people commit crime, whether deterrence works, what part of the criminal justice system most needs improvement, and how criminals should be sentenced."

2

The Deterrent Strategy

> **"We have been too lenient toward those who break the laws. The most promising solution is to get tougher with all criminals, to make it clear that we won't tolerate criminal behavior."**

"The frustration and anger are obvious," said New York Mayor Ed Koch, in a television interview soon after the Goetz episode. "The rights of society have been impinged upon. What people are saying is they're fed up. I'm fed up too." Though the shooting took place in a New York City subway, people responded passionately and vehemently across the country. In the words of Dave Walker, co-host of a call-in show on the Cable News Network: "This case hit a raw nerve. There is a broad sense of frustration and anger over the state of the criminal justice system, and right now people don't seem to care whether or not Goetz used appropriate force."

What prompted many people to speak out in defense of Goetz's action were reports about the young men he shot. All four had arrest records. Three had been convicted for petty crimes by the time they were 18 on such misdemeanor offenses as larceny, criminal mischief, and disorderly conduct. Two had been arrested for felony offenses, one for possession of stolen property, another for attempted assault. The most seriously injured of the four young men was awaiting trial on charges of robbing three men with a shotgun. By their own admission, several of them made a practice of breaking into video game machines to steal change. At the time of the shooting, two were carrying screwdrivers for just that purpose. Yet none had spent more than a few months in jail. Out of school and unemployed, they seemed to have adopted petty crime as a career. Until that December day on the subway, it was an easy "job" with few serious risks, something that paid off for them.

When he bought a gun, Bernhard Goetz acted out of frustration with the system that allowed that to happen. His anger at the criminal justice system was prompted in part by the fact that a young man who tried to mug him some months earlier was released by the police in a matter of minutes. And this seems to have struck a responsive chord for many people who, like Goetz, have suffered injury or loss at the hands of criminals, only to find that the criminals were not apprehended, or at most received a slap on the wrist and a reprimand. In Miami, people talk about the young men who were caught and convicted for having robbed a woman stranded in a disabled car on a freeway, sentenced to just a year in jail — and then released after only 79 days.

The public's fears and fantasies of revenge are expressed in popular films like Sylvester Stallone's *Cobra*, which was released in the summer of 1986. It is a film about a tough, big-city cop who specializes in hunting down dangerous criminals. The point of the film seems to be that good guys can't win if they play by the rules. The hero is only grudgingly tolerated by the police department that employs him, and no wonder. He is a one-man army who has little patience for the niceties of due process, and he single-handedly defeats the enemy. Along the way, he reserves some of his most contemptuous remarks for the courts and the judges. "We put them away," he says to his girlfriend, "and the judges let them out."

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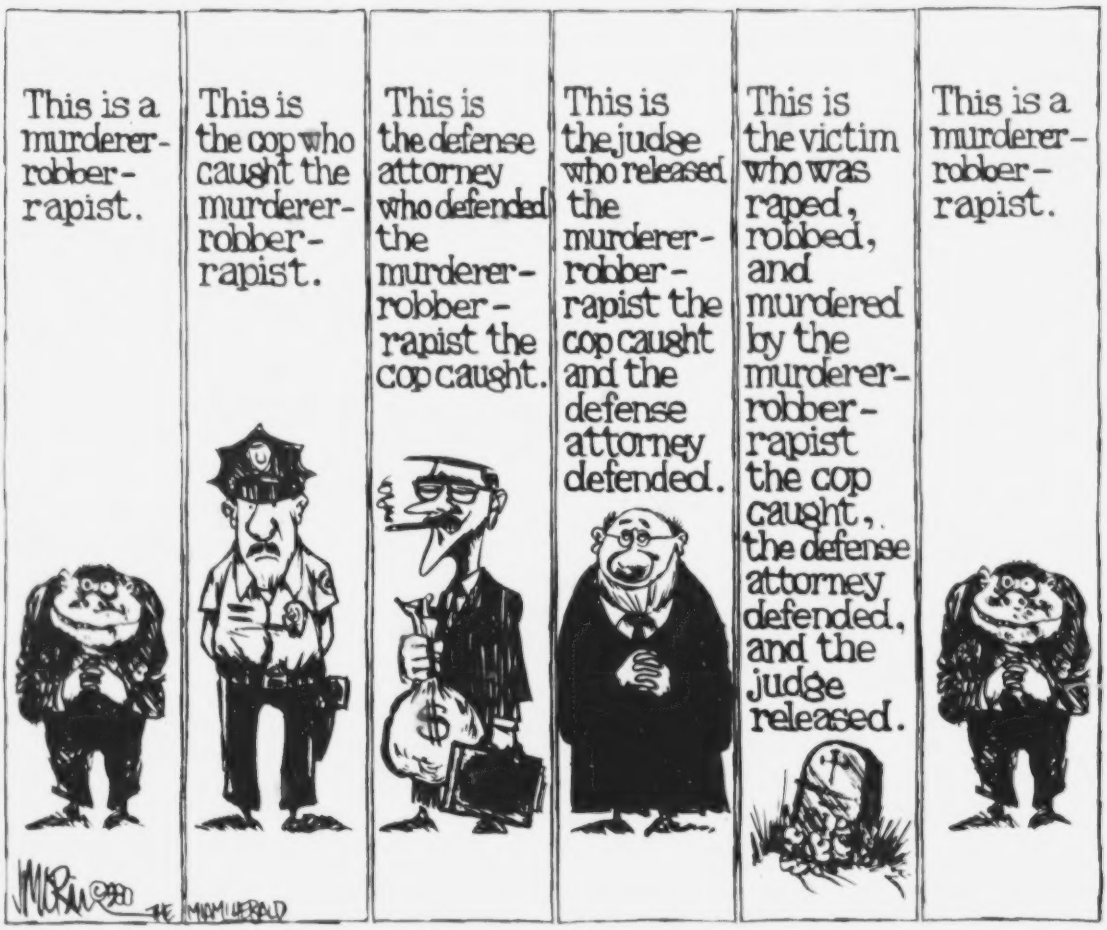

This is a murderer-robber-rapist.
This is the cop who caught the murderer-robber-rapist.
This is the defense attorney who defended the murderer-robber-rapist the cop caught.
This is the judge who released the murderer-robber-rapist the cop caught and the defense attorney defended.
This is the victim who was raped, robbed, and murdered by the murderer-robber-rapist the cop caught, the defense attorney defended, and the judge released.
This is a murderer-robber-rapist.

Jim Morin, *The Miami Herald*

The Risks and Rewards of Crime

All of which leads to a diagnosis of the crime problem that to many people is both obvious and compelling. The reason why crime has gone up is that people have discovered it is easy to get away with. In the words of a *Wall Street Journal* editorial that commented on the rising crime rates of the late 1970s and early 1980s, "The sharp increase of crime in many states has undoubtedly resulted from the absence of punishment. . . ." Given how slim the chances are that offenders will see real punishment, it's no wonder that many take the risk of capture and court appearance in stride.

This perspective on the crime problem is based upon the assumption that criminals are much the same as other people. Like the rest of us, their behavior is governed by the expectation of certain risks and rewards. In this sense, choosing to commit crime is like choosing a line of work. A substantial number of people, in other words, examine the world around them and conclude that, everything considered, crime is a better bet than a "straight" career, that stealing is more profitable than working. "Criminals commit crime because it's easy," said President Reagan in a 1981 address. "They do it because they believe no one will stop them. The truth is that criminals in America today get away with plenty. Sometimes, quite literally, they get away with murder."

Most law-abiding citizens — whose view of the justice system is colored by television portrayals of intrepid detectives who invariably discover who committed the crime, and courtroom dramas in which juries reach a verdict and see that justice is done — overestimate both the chances of being caught and the severity of sentences. But most criminals have different sources of information, and more accurate ones, about the likelihood of apprehension and the risks they run.

As political scientist James Q. Wilson points out, criminals depend on the accounts of others who have recently had "a run-in with the police or the courts and who therefore can supply to their colleagues a crudely accurate rule of thumb. 'The heat is on' or 'the heat is off.' Judge Bruce MacDonald is either 'Maximum Mac' or 'Turn 'em Loose Bruce.' The prosecutor will let you 'cop out' to a burglary charge so that it gets marked down to a misdemeanor." As Wilson concludes, most criminals

A Criminal's Chances of Being Sent to Prison

Since some individuals commit multiple crimes, the total number of criminals was less than 8.6 million. Still, for the majority of crimes no one is apprehended, and in the majority of cases where an arrest is made no one is sent to prison. Since Justice Department figures on incarceration include a small number of people sent to prison for minor offenses, the chances of being sent to prison for a serious crime are even smaller than this chart suggests.

Source: U.S. Department of Justice, Bureau of Justice Statistics, and U.S. Federal Bureau of Investigation.

operate on the basis of at least a crude rule of thumb about the risks they are likely to encounter.

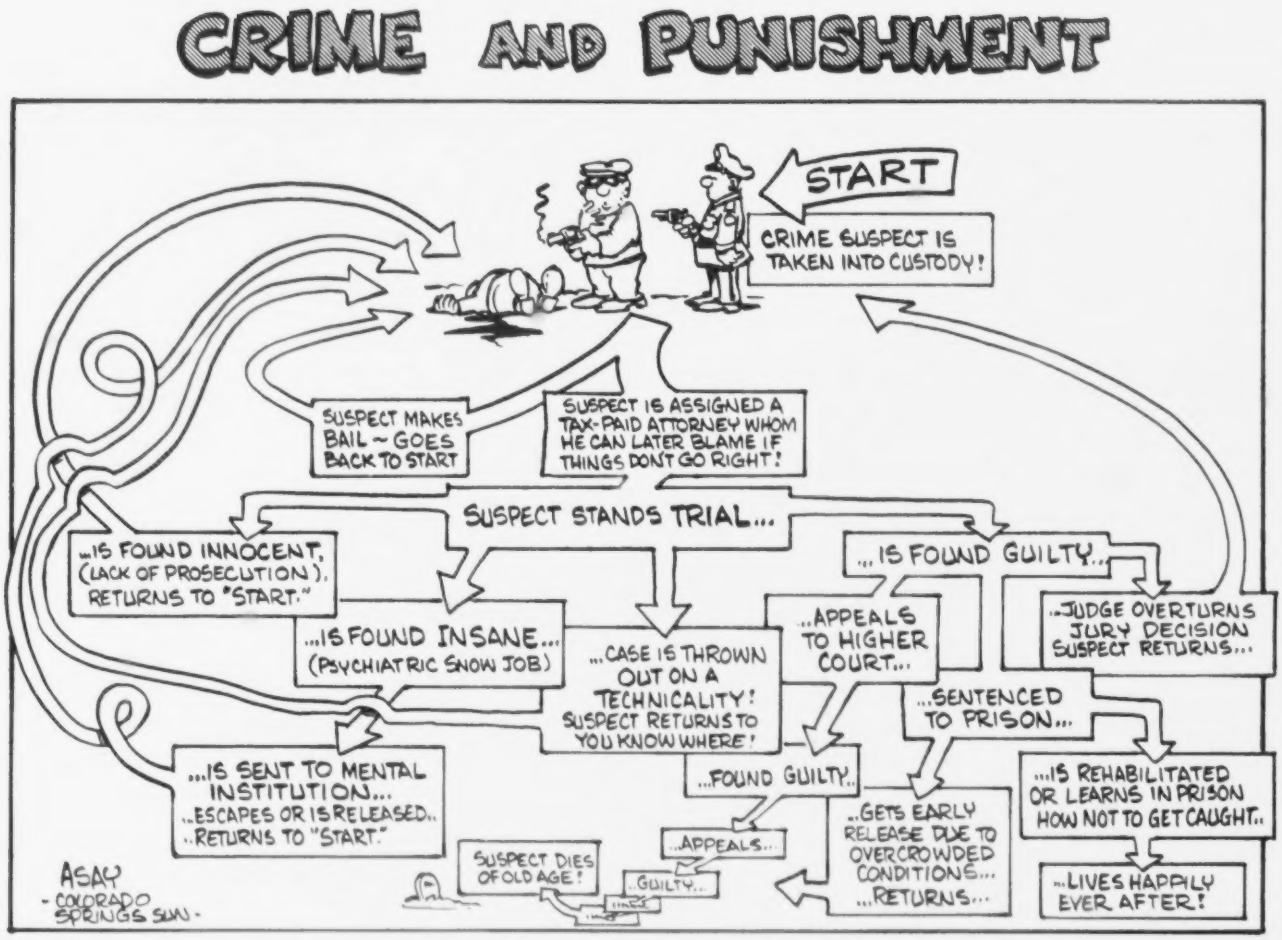
By and large, the criminal justice system does not offer a consistent or effective deterrent to criminal behavior. From this perspective, the most important thing to notice about the criminal justice system is how seriously flawed it is at each stage from apprehension to sentencing.

At the first step, people *are* often "getting away with it" on the streets. A study from the Rand Corporation shows that the chance of being arrested for any given robbery is only about one in ten. Even those who engage in *armed* robbery — a more serious felony — manage to escape apprehension seven out of eight times. There are various reasons why the chance of being caught for any particular crime is so low, among them the fact that half of all major crimes are never reported to the police. But the fact that the odds so heavily favor criminals serves as an inducement to crime.

Even when arrested, suspects often go free. Roughly half of all arrests result in the dismissal of charges. In some cases, there are evidence problems that result from a failure to find sufficient physical evidence linking the defendant to the offense. In other cases, problems arise when witnesses fail to appear, or when they give inconsistent testimony. Particularly when a prior relationship exists between the victim and the defendant, it is not uncommon for witnesses to decide not to testify.

Or, finally, the case may be dismissed because of due process problems. Both the police and prosecutors sometimes drop cases based upon improperly obtained evidence. Critics of the exclusionary rules cite examples such as this episode which took place in 1981 in Baltimore: A young man, James McClain, was staying at his girlfriend's apartment one evening with her baby while she was out. During the evening, a friend came to the high-rise apartment and showed McClain a picture of his girlfriend with another man. Incensed, McClain took out his anger on the child. In his confession, McClain said, "I carried [the baby] to the garbage opening, [laid] him in it, and just let him go." Subsequently, McClain was convicted of killing the child and sentenced to life behind bars.

However, 18 months after McClain made his confession, Maryland's Court of Appeals ruled that confessions extracted from suspects can be used only if that person is taken before a court commissioner within 24 hours of the arrest. As it happened, McClain gave his confession and then was taken to a commissioner — 24 hours and 12 minutes after the arrest. When the Court of Appeals made its decision retroactive, the testimony provided in McClain's confession was ruled invalid, and he was set free. To many people, cases such as that one are appalling examples of legal technicalities taking precedence over justice. At a time when crime rates are so high, as advocates of swift and certain punishment conclude, it is unconscionable that many cases are thrown out on such technicalities.


CRIME AND PUNISHMENT
START
CRIME SUSPECT IS TAKEN INTO CUSTODY!
SUSPECT MAKES BAIL ~ GOES BACK TO START
SUSPECT IS ASSIGNED A TAX-PAID ATTORNEY WHOM HE CAN LATER BLAME IF THINGS DON'T GO RIGHT!
SUSPECT STANDS TRIAL...
...IS FOUND INNOCENT, (LACK OF PROSECUTION), RETURNS TO "START."
...IS FOUND INSANE... (PSYCHIATRIC SNOW JOB)
...CASE IS THROWN OUT ON A TECHNICALITY! SUSPECT RETURNS TO YOU KNOW WHERE!
...APPEALS TO HIGHER COURT...
...IS FOUND GUILTY...
..JUDGE OVERTURNS JURY DECISION SUSPECT RETURNS...
..SENTENCED TO PRISON...
...IS SENT TO MENTAL INSTITUTION... ..ESCAPES OR IS RELEASED.. ..RETURNS TO "START."
...FOUND GUILTY..
..APPEALS..
..GUILTY..
SUSPECT DIES OF OLD AGE!
..GETS EARLY RELEASE DUE TO OVERCROWDED CONDITIONS... ...RETURNS...
...IS REHABILITATED OR LEARNS IN PRISON HOW NOT TO GET CAUGHT..
..LIVES HAPPILY EVER AFTER!
ASAY - COLORADO SPRINGS SUN -

Encouraging the Calculators

In theory, the criminal trial is at the heart of the law enforcement system. In fact, only a small minority of those arrested and charged with serious crimes are subjected to trial by jury. This, too, is a concern to those who feel that the justice system offers no sufficient deterrent to criminals. What actually happens in many cases is that judges and prosecutors rely on plea bargaining. Under this type of agreement, the defendant pleads guilty to a lesser charge than is warranted by the facts. Plea bargaining is justified on two grounds. It saves the money and trouble involved in arranging a trial. Also, since it results in shorter sentences than those prescribed for the crime actually committed, it helps to ease pressure on an overcrowded prison system.

As those who advocate a more effective deterrent to crime see it, resorting to plea bargaining may be expedient in the short term. But it is unjust for pleas to be "copped" to relatively trivial offenses, especially when it is almost certain that the people who do so are guilty of more serious crimes. For the accused, as legal scholar Richard E. Morgan puts it, "the plea bargaining process becomes a sordid crapshoot (albeit with the dice loaded in his favor) rather than a solemn accounting before the community of his guilt or innocence." If we wanted to tell would-be criminals that the court system is prepared to wink at wrongdoers and bargain over their punishment, we could hardly do better than the plea bargaining process.

At the stage of sentencing, there is no firm connection between the severity of the crime and the severity of the sentence. In fact, only about 25 percent of those convicted are sent to prison; the rest are released on probation. Often, it is the number of prison cells available, not the seriousness of the crime, that determines which defendants will serve what amounts of time. Consequently, parole and work release programs are used not only to mitigate the harshness of the sentence; they are also employed because there is no room to house prisoners.

Paul Conklin

"Under our criminal procedure, the accused has every advantage. Our danger does not lie in too little tenderness to the accused... What we need to fear is the watery sentiment that obstructs, delays, and defeats the prosecution of crime."

— Judge Learned Hand

That helps to explain why, even when longer prison terms are specified, they are rarely served. A recent study by the Bureau of Justice Statistics found that the average murderer spends seven years behind bars, the average robber two-and-a-half years. "We are incarcerating more people," observes criminologist Lyle Shannon, "but most get out before very long."

Overall, as advocates of stiffer deterrents to crime see it, ours is a deeply flawed criminal justice system. Its message to would-be criminals is that even if you are caught for a serious crime, you can probably get away rather cheaply. "Many people," writes James Q. Wilson, who are "watchful, dissembling, and calculating of their chances, ponder our reaction to wickedness as a clue to what they might profitably do. Our actions speak louder than our words. When we profess to believe in deterrence and to value justice, but refuse to spend the energy and money required to produce either, we are sending a clear signal that we think that safe streets can be had on the cheap. We thereby trifle with the wicked, make sport of the innocent, and encourage the calculators. Justice suffers, and so do we all."

What Should Be Done?

To the proponents of this view of the crime problem, it is clear what should be done. A higher percentage of all criminals must be apprehended and given punishments that are as severe as their crimes.

At each stage of the criminal justice process, certain changes are needed to make punishment more certain. Improvement should start at the stage of apprehension. Proponents of this view emphasize the importance of putting more and better-equipped police on the streets and in other public places. One of the most insistent public responses to the Goetz episode was that there are too few police in the places where serious crime most often happens, and this is a common complaint in many communities. Even if there is little clear evidence that adding more police or providing more sophisticated equipment is likely to deter street crime, some measures — such as putting more police on foot patrol in high crime areas — seem promising.

Additionally, the procedures followed in criminal courts should be changed. There should be broader guidelines regarding what evidence is allowable in criminal prosecution. Legal loopholes such as plea bargaining that now allow many of the accused to get off with light sentences should be removed.

Most of all, harsher sentences should be imposed. For some years, judges were given considerable discretion in sentencing, leading to the indeterminate sentence where a defendant might receive a 1-to-25 year sentence with the parole board deciding when the defendant is sufficiently rehabilitated to be released. But advocates of more effective deterrents to crime oppose indeterminate sentences, and reject the very principle of rehabilitation upon which it is based.

A Delicate Balance: Individual Rights, and Society's Right to Protection

Speaking to a convention of police chiefs in New Orleans in 1981, President Reagan was enthusiastically applauded when he denounced the exclusionary rules, under which a law enforcement error can be used to justify throwing a case out of court. "This rule rests on the absurd proposition that a law enforcement error, no matter how technical, can be used to justify throwing an entire case out of court, no matter how guilty the defendant or heinous the crime."

The exclusionary rules are the most often criticized constraints on the criminal justice system. Debate over these rules underlines the tension between two objectives — protecting individual rights and protecting society by enforcing the law — and the difficulty of determining an appropriate balance between them. What is at issue is the interpretation of the Fourth and Fifth Amendments to the Constitution, which, in providing due process of law, protect individuals against the arbitrary use of the state's power.

The Fourth Amendment spells out Americans' rights to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In the United States, as a general rule, police are not allowed to search a home without a warrant signed by a judicial officer and issued on "probable cause" that the materials seized are in the place to be searched. In limiting what the police can do, the Fourth Amendment recognizes a fundamental difference between a free and a totalitarian society. It also places certain constraints on the police which makes it more difficult to get evidence and make arrests. Evidence gained through unauthorized search and seizure cannot be used in court.

The most controversial of the exclusionary laws are those which apply to the rights of the accused, particularly a rule that was laid down by the Supreme Court in 1966 in the case of *Miranda* vs. *Arizona*. In this decision, the Supreme Court ruled that the Fifth Amendment's protection against self-incrimination requires that suspects be clearly informed of their rights before they are asked any questions by police. Hence the familiar *Miranda* warning to people under arrest: "You have the right to remain silent. Anything you say can be used against you. . . ."

In the years since the *Miranda* decision, the Supreme Court has often addressed the trade-off between fighting crime and protecting civil liberties. Recently, it has limited that ruling, but it has not overturned it.

Still, there are two quite different views of the exclusionary laws and whether they strike an appropriate balance. Recalling Justice Felix Frankfurter's remark that "the history of liberty is largely the history of the observance of procedural safeguards," civil libertarians regard the *Miranda* warnings as a modest safeguard against police coercion. Due process begins with the assertion that individuals are innocent until proved guilty. Procedural safeguards such as these are a way of ensuring that innocent people will not be wrongfully accused or convicted.

Besides, as their supporters observe, the exclusionary rules do not result in drastically lower conviction rates, nor do they undercut the deterrent effect of the criminal justice system. A study by the General Accounting Office found that exclusionary rules are used as a basis for throwing out evidence in fewer than 2 percent of all cases. So abolishing or weakening these rules would do little to get criminals off the streets.

To others, the exclusionary rules symbolize what has gone wrong in a system that seems to care more about individual rights than bringing criminals to justice. In the words of legal scholar Richard E. Morgan, "It is thought an injustice if the nicest points of investigative and trial procedure are not observed. To admit any evidence (no matter how useful to the truth-finding function of the trial) that is 'illegally obtained' is regarded as unjust. But for guilty persons to walk away from their crimes or 'cop out' for suspended or minor sentences is not perceived as revolting."

Even if no other witnesses to the crime were present, and there are reasonable grounds to suspect an individual, but insufficient evidence to charge him with guilt, the police have no right to extract a confession when the suspect chooses not to talk. As many people see it, by significantly restricting police interrogation of suspects, the *Miranda* decision deprives society of the suspect's help in solving a crime.

Critics of the "exclusionary rules" recall what Judge Learned Hand wrote some 60 years ago: "Under our criminal procedure the accused has every advantage. Our danger does not lie in too little tenderness to the accused. Our procedure has always been haunted by the ghost of the innocent man convicted. What we need to fear is the watery sentiment that obstructs, delays, and defeats the prosecution of crime."

Hold it, Pete... I don't think the new Law allows us to throw rocks at fleeing suspects!
COURT STRIKES DOWN FLEEING FELON LAWS
GAMBLE

Ed Gamble. Courtesy *Florida Times-Union*

It is simply not realistic, as they see it, to expect that individuals who in many cases have devoted years to misbehavior of various sorts would — by virtue of their prison experience — see the error of their ways and come out of the prison transformed, determined to go straight. In any case, the premise of rehabilitation is refuted by most of the evidence about what prisoners actually do when they are released.

Moreover, the belief in rehabilitation has led to sentencing practices that are arbitrary and unfair. Indeterminate sentences are justified on the ground that a convict should be released when someone (in most cases, a parole board) decides that he is rehabilitated. But since no board can make subtle judgments about each of the hundreds of parole cases it hears each year, certain rules of thumb are generally applied. These include the assumption that prisoners are likely to be rehabilitated when they have served one-third of their sentences or three years, whichever is less.

If, as advocates of this view conclude, prisons do not rehabilitate and parole boards are incapable of determining when a criminal is fit to return to society, the public would be better served by mandatory sentences — fixed sentences for specific crimes, imposed automatically.

In fact, this is what has been happening in recent years. Most states now have mandatory sentences for some crimes—often those committed under special circumstances, such as exceptional violence or the use of a gun, or for second or third offenses by the same offender. Moreover, several states have established guidelines regarding parole release to minimize differences in the length of the prison sentence. This removes some of the arbitrariness in sentencing and parole decisions, thus establishing firmer guidelines about the kind of punishment that everyone who commits serious crimes will face.

Because of the mandatory sentences that have been legislated in recent years, there has been a sharp increase in the severity of the sentences which many kinds of offenders can expect to receive. In New York State, for example, less than half of the offenders convicted of robberies went to state prison in 1971; by 1979, three-quarters did. And the sentences were considerably longer as well. In 1970, just 4 percent of that state's prison inmates faced mandatory minimum sentences of more than 31 months. By 1980, about one-third did. In the view of those who advocate getting tougher on criminals, putting more offenders behind bars is just what should be done to deter crime.

Swift and Severe Punishment

Those who insist upon the importance of deterring crime place their bets on increasing the punishment—especially on harsher prison sentences. In 1984, the Federation of New York Judges declared that American society is threatened by "robbers, rapists and felons of every kind," and recommended an ambitious program of prison construction, because "swift and severe punishment is the only defense against predators."

Unless we are willing to accept seriously overcrowded prisons as a permanent condition, a strategy which proposes to put more offenders behind bars would require a substantial investment in new cells. Today, the cost of constructing a single maximum-security prison cell is roughly $75,000. In addition, the federal prison system reports an average annual cost of about $20,000 per inmate. It has long been recognized that imprisonment is the most expensive sentencing option. But proponents of this view conclude that if multibillion dollar expenditures are necessary to contain the most dangerous criminals and to deter would-be criminals, it is a justifiable expense.

There are other drawbacks to this crime-control strategy. Proponents of this position advocate that some of the existing restraints be removed from law enforcement authorities to help them get evidence and make arrests. Under these circumstances, the civil liberties of some individuals are likely to be violated. But as advocates of this strategy see it, what we would gain by granting more freedom to law enforcement officials—more arrests and convictions, more protection of the public against crime—justifies occasional infringements on civil liberties.

It is time to stop making excuses for those who commit crime, and to stop apologizing for imposing harsh sentences on those who commit them. "We must understand," as President Reagan put it in a 1981 address, "that basic moral principles lie at the heart of our criminal justice system, and that our system of law acts as the collective moral voice of society. There is nothing wrong with these values. Nor should we be hesitant or feel guilty about punishing those who violate the elementary rules of civilized existence. In the end, the war on crime will be won only when an attitude of mind and a change of heart takes place in America, when certain truths take hold again. Truths like right and wrong matter, and individuals are responsible for their actions. Retribution should be swift and sure for those who prey on the innocent."

This approach to the crime problem, based on the assumption that if we raise the cost of committing serious crimes, fewer people will commit them, seems to some people both obvious and compelling. Yet others who are just as concerned about violent crime reject that assumption. They have a different view of why people commit crime, which leads to another prescription for fixing the criminal justice system. So let us turn to this second choice.

"In the end, the war on crime will be won only when certain truths take hold again. Truths like right and wrong matter, and individuals are responsible for their actions. Retribution should be swift and sure for those who prey on the innocent."
—President Ronald Reagan

3

Targeting the Violent Few

In one of his comedy routines, comedian Richard Pryor pauses in the middle of a series of jokes, and talks pensively about the film *Stir Crazy*, in which he and Gene Wilder starred. To prepare for their roles as men unjustly imprisoned, they spent time in an Arizona penitentiary. As Pryor recalls, they talked with men who had been behind bars for years, heard their stories, got to know something about them and their families, caught glimpses of their souls. That experience, said Pryor, made a deep impression. And it left him with a message for those who had never had the same experience. The message was: thank God for the penitentiary!

This is a different view of criminals and crime control, one which rests on the assumption that criminals (at least those who commit most violent crimes) are different from other people. In several respects, this approach — which leads to quite different conclusions about such matters as whether deterrence works, and how criminals should be sentenced — amounts to a critique of the position we just considered.

The assumption on which that first perspective rests is that criminals are individuals who weigh the risks and benefits of their actions. It follows, then, that crime can be reduced by increasing apprehension and imposing stiffer sentences. If crime were a riskier business, in other words, fewer individuals would choose to commit crimes. But from this second point of view, the very fact that crime rates have continued to rise, despite stiffer sentencing, suggests that something is wrong with that approach.

"The only way to control violent crime is to recognize that a small group of criminals are high-rate offenders. We should concentrate on identifying them, and then impose harsh sentences to keep them off the streets."

The Deviant Minority

Proponents of this second view have an explanation of why the crime problem does not seem to be responding to changes in incentives. It is, quite simply, that many criminals are *not* like the rest of us. Something in their psychological or biological makeup causes them to be less influenced by the conventional rewards of good behavior and the costs of breaking the laws. Some people commit crimes regardless of the risks. Indeed, for certain criminals, when the risk is greater, so too is the thrill of committing the crime. Others (particularly those who are under the influence of drugs or alcohol) seem only dimly aware of the risks they take when they commit a crime.

Consider, for example, the young men who were shot by Bernhard Goetz, all four of whom had criminal records. From the perspective we just considered, if the criminal justice system worked properly, they would have been punished for their actions, and deterred from committing other crimes. Yet much of what we know about those four young men suggests that they were not inclined to calculate the risks and benefits of their criminal activities. Just six months after the episode in the subway, one of the four men raped and robbed a young woman who lived in his housing project. The victim said she was forced at gunpoint to a stairway landing, beaten severely, raped, and

robbed of her jewelry. The 19-year-old assailant was charged with rape, robbery, sodomy, assault, criminal use of a firearm, and possession of stolen property, and sentenced to 25 years in state prison.

In this case, it is difficult not to ask an obvious question: what kind of person would commit so violent a crime under circumstances in which apprehension was virtually certain, while in the glare of public attention which increased the likelihood of a severe sentence if he was convicted? Given the facts of the case, it hardly makes sense to conclude that the young man would have been deterred from committing the crime by the threat of more certain apprehension or a harsher sentence.

To advocates of this second perspective, a realistic program of crime control has to begin with a sober and accurate view of human nature, and a recognition of the fact that many of the people who commit violent crimes are indeed different. It follows that a strategy of deterring crime by increasing its risks is likely to fail.

Superfelons

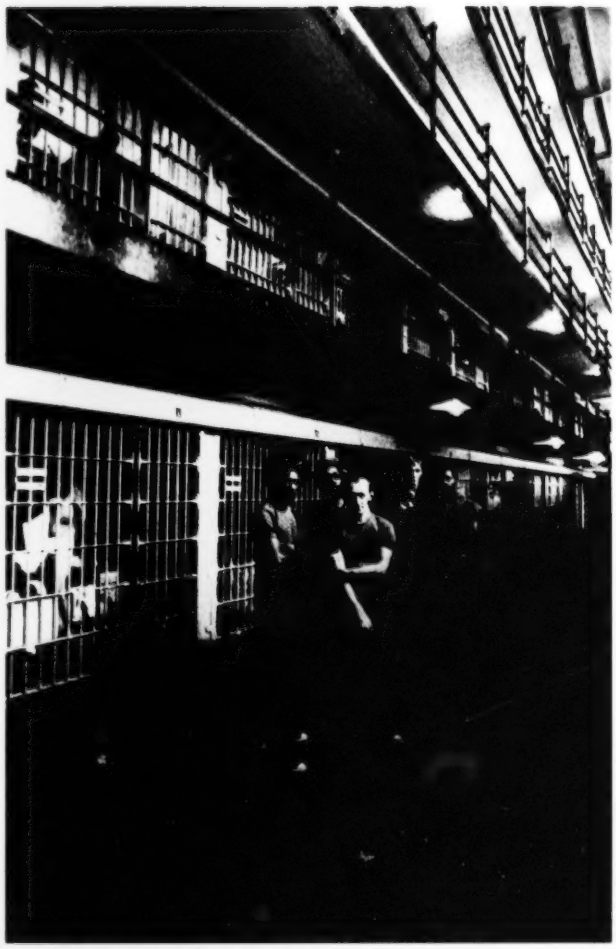
This view is bolstered by a finding which has shown up repeatedly in criminological research over the past 15 years. Most serious crimes are committed by a relatively small number of criminals, who tend to repeat their offenses despite frequent spells of imprisonment.

In a trail-blazing study, criminologist Marvin Wolfgang and his colleagues at the University of Pennsylvania set out to answer a question no one had bothered to ask before: Just how much of the total amount of serious crime is committed by what proportion of criminals? The results of Wolfgang's study were surprising in several respects.

First, he found that a strikingly high proportion of Philadelphia's young people—35 percent of them—committed some crime for which they were arrested by the age of 18. It might seem sensible to try to solve the crime problem by locking up a larger number of felons for longer periods of time. If the rate of criminality in Philadelphia accurately reflects nationwide rates, we would have to expand the prison system dramatically to do so, at a prohibitively high cost. But if we are serious about combating crime, what other alternative do we have?

A second result of Wolfgang's study suggests an alternative. He found that more crime is committed by a smaller fraction of offenders than anyone had suspected. A majority of serious crimes were committed by a relatively small proportion of the youth population. Charting the criminal "careers" of boys born in Philadelphia in 1958, he found that about 7 percent of them were responsible for almost 70 percent of all serious crime committed by individuals born in that year.

Research conducted at the Rand Corporation by Peter Greenwood and several associates in the early 1980s came to the same conclusion. Half of the prisoners they surveyed had committed at least one burglary in the two years before they were put behind bars. But within that group, half admitted to committing burglaries at a rate of over 200 a year.



David Burnett/Contact

Central Prison, Raleigh, North Carolina

Much of the violent crime problem, then, appears to be caused by a relatively small number of hard-core offenders—those who commit crimes at a significantly higher rate than others and are aptly described as chronic criminals. These findings imply that a strategy of "getting tough" by increasing penalties for *all* offenders is an ineffective and wasteful use of limited criminal justice resources. If serious crime is concentrated among a small group of repeat offenders, a more effective strategy would be to devote more of our resources to identifying those high-rate offenders and putting them behind bars for a long time. The Rand researchers call this a strategy of "selective incapacitation." It concentrates on getting chronic offenders off the street, and thus preventing them from committing further crimes.

This approach differs from the first perspective in proposing even tougher punishments for serious repeat offenders. At the same time, criminals who are not serious or repeat offenders

From this perspective, it is unrealistic to hold out the hope of rehabilitation for many violent criminals.

would have their sentences shortened. So the potential benefits of this approach are clear. If some method can be devised to identify this small group of hard-core criminals early in their criminal careers and put them behind bars until they are beyond their most crime-prone years, we should be able to reduce significantly the overall crime rate without spending much more for prisons.

Selective Incapacitation

For this strategy to work, the judge has to determine at the time of sentencing whether the accused is likely to be a chronic offender. If so, a harsh sentence is imposed. The effectiveness of selective incapacitation depends upon our ability to predict which offenders are likely to be high-rate offenders.

The problem is that it is difficult to predict accurately just who the high-rate offenders will be. Knowing the nature of their present offense is not a sufficient clue, because most criminals do not specialize. The individual who snatches a purse today might be involved in armed robbery tomorrow. So the crime for which an individual is arrested is unlikely to be the same as his last crime, or his next one. Accordingly, if sentencing is based mainly on the gravity of the current offense, a person with a long arrest record who is caught for a minor offense such as shoplifting may get off with a light sentence. At the same time, a first-time offender caught for armed robbery might get a long sentence.

The strategy of selective incapacitation requires the judge to go beyond the current offense and take into account the offender's past history and personal characteristics, and on that basis sort out high-rate offenders from all the others.

Attempts to anticipate the future behavior of offenders is nothing new. At each stage in the criminal justice system, judgments are made about which offenders are most likely to pose a particular threat to the public safety. Decisions about sentencing routinely take into account not only the severity of the crime, but also the potential danger that the offender poses to society in the future. Judges consider the offenders' characteristics — such as work history, drug or alcohol use, family circumstances, and psychiatric evaluations — in deciding what sentence to impose.

So the criminal justice system already punishes people

selectively. The question is whether new methods of selectively incapacitating offenders can be devised that are more effective than the ones already being used.

Advocates of selective incapacitation think we can do better. On the basis of interviews with inmates in three state prison systems, researchers at the Rand Corporation discovered seven characteristics which, in combination, predict which offenders are likely to be chronic offenders. For example, individuals who support a heroin habit, or who use both alcohol and barbiturates are especially likely to be persistent, serious, high-rate criminals. The Rand researchers believe that a robber should receive long-term imprisonment if he matches any four of these seven variables: (1) Convicted prior to age 16; (2) Committed to a juvenile facility; (3) Used heroin or barbiturates within two years before the current arrest; (4) Used heroin or barbiturates as a juvenile; (5) Held a job less than one of the two years before his current arrest; (6) Had a prior robbery or burglary conviction; (7) Spent more than half the preceding two years in jail.

Peter Greenwood tested this profile of chronic criminals against the sentences judges gave to 781 convicted robbers and burglars in California. In a high percentage of all cases, the scale accurately predicted who would be the high-rate offenders. However, the judges gave long terms to quite a few of the low-rate offenders and short terms to many of the superfelons. Greenwood argues that if a strategy of selective incapacitation had been applied, California could have kept 700 fewer convicted robbers behind bars, while reducing street crime by some 27,000 robberies.

Fair Sentences, Tough Choices

To its proponents, this strategy of devoting more resources to identifying and incarcerating high-rate criminals is a promising way to reduce the rate at which violent crime is committed. But it also raises some fundamental questions about the principle according to which people who have committed violent crimes should be sentenced.

Some critics feel that crime control should not be the guiding principle. Criminologist Andrew von Hirsch, for example, claims that the only legitimate basis for sentencing is retribution — what he refers to as "just deserts." Up to a point, at least, most people would probably agree with him. Even if we were convinced that a convicted murderer would never murder again, there would still be some obligation to impose a severe sentence in recognition of the value we attach to a human life. Even low-rate offenders who have not committed serious crimes deserve to be punished for violating the moral code.

Questions of fairness arise as well. Is it fair for a low-rate offender who is convicted of a serious crime to receive a shorter sentence (because he is not a threat to become a repeat offender) than someone who is caught for a relatively minor offense but judged to be a probable high-rate offender?

Serious questions arise, too, about how accurate even the best of methods are in predicting high-rate offenders, and whether prediction methods are reliable enough to allow them to determine sentence length. Even supporters of selective incapacitation acknowledge that there will be some errors in prediction. No matter how sophisticated we become at specifying the characteristics of high-rate offenders, any system will fail to identify some chronic criminals, thus allowing them to get away with relatively light sentences. Even more troubling is the likelihood that some relatively harmless offenders will be wrongly categorized as dangerous high-rate offenders, and condemned needlessly to harsh sentences.

Even if we could confidently predict which people are most likely to commit repeat crimes in the future, critics argue that it is wrong to punish individuals on the basis of what they might do in the future. This amounts to passing judgment on the criminal, not on the crime. Some people think that this violates the fundamental principle of fairness which lies at the heart of our system of justice, that punishment should fit the crime.

The implications of selective incapacitation are especially troubling when you look at specific predictors of chronic offenders in the Rand study, such as employment history or a history of drug abuse. As it happens, the young delinquents in that study who became chronic adult offenders were disproportionately black, and disproportionately poor. Is it just to sentence black or poor youths to longer terms than white, middle-class youths for the same crimes?

Advocates of this approach point out that since minorities are the most frequent victims of violent crime, doing so is in their interest. Moreover, protecting society from its most dangerous members must take precedence over the relatively minor infringements on civil liberties that may arise from "selectively" incarcerating those who seem most likely to victimize others in the future. After all, these criminals have flagrantly violated social norms by committing the most heinous of crimes.

At least implicitly — and often quite explicitly — proponents of this strategy reject the idea that chronic criminals can be rehabilitated. But whatever else prison does, it protects society from the offenses these individuals would commit if they were free. If we are serious about protecting society from the people who are most prone to violent crime, imposing longer prison sentences is the surest way to do so.

Juvenile Justice

This strategy raises some troubling questions about how to treat juveniles convicted of serious crimes. Since juvenile courts were first established as part of the criminal reform movement in the late nineteenth century, one of the understandings on which the justice system has been based is that young people are salvageable human beings who deserve special treatment and a second chance. The rationale for giving lighter sentences to

'I'M SORRY, KID, BUT IT REALLY HURTS ME MORE THAN IT HURTS YOU'

Valtman — Rothco Cartoons

juveniles is that with them, at least, we should hold out the hope of rehabilitation. Thus, although youths can be tried as adults when they commit serious felonies such as armed robbery, rape, or attempted murder, they are sentenced with milder penalties for the crimes they commit.

Yet advocates of this second perspective on crime control insist that the tendency to commit violent crime shows up early, and that chronic offenders are unlikely to change even if serious rehabilitation efforts are made. The high-rate offenders, says Marvin Wolfgang, are "a very violent criminal population of nasty, brutal offenders. They begin early in life and should be controlled equally early." The criminal careers of high-rate offenders begin at an early age. Chronic criminals often begin by age 13 and hit their peak as robbers and burglars by age 16. Wolfgang concludes that a boy who commits his second serious offense before the age of 15 is quite likely to commit dozens of offenses by age 30. He advocates that after the third conviction, serious juvenile offenders should be considered adult criminals and sentenced accordingly.

That is just what many police departments and prosecutors are doing, making a concerted effort to arrest and convict young "chronics" who fit the violent predator profile. In at least 20 states, legislators have changed the laws to make it easier to try young criminals as adults. Instead of letting juvenile offenders who pose a serious threat to society off with a slap on the wrist while reserving the most serious punishment for older offenders whose aggressiveness is diminishing, we should concentrate on incarcerating juvenile offenders who seem likely to become chronics — even if that means giving up on them.

Refining Crime-Control Methods

To its proponents, this strategy of selective incapacitation, which is based upon what they see as a more realistic view of serious criminals, offers a promising approach to crime control. Instead of "getting tougher" by imposing longer sentences for all criminals, advocates of this perspective would impose longer sentences on those who fit the profile of chronic violent criminals. Although this would mean incarcerating fewer people than the first choice we considered, it is no easy alternative. Since it would impose more severe sentences for chronic violent criminals, a substantial number of individuals would be incarcerated for long periods.

"High-rate offenders are a very violent criminal population of nasty, brutal offenders. They begin early in life and should be controlled equally early."

— Marvin Wolfgang

But, as its advocates conclude, this is a cost worth paying for increased protection against a group known to be dangerous predators and a threat to the public safety. As Alfred Regnery, administrator of the Office of Juvenile Justice puts it: "Criminologists have given us important knowledge about who commits crime. If police, prosecutors, and judges put it to work, we could vastly improve the fairness and effectiveness of our criminal justice system, ease prison crowding, and enjoy safer streets and homes."

4

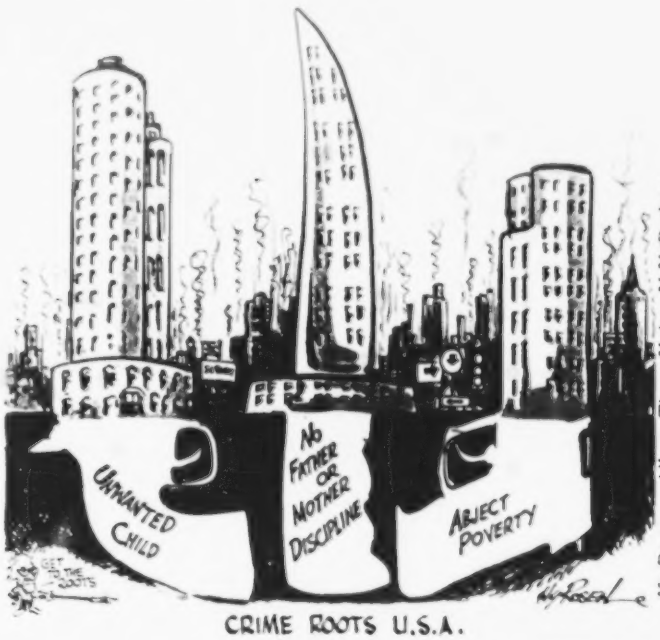
Attacking Crime At Its Roots

The two positions we have examined so far differ in several respects, particularly about whether more severe punishment is likely to deter criminals, and how they should be sentenced. But both positions share a view that is widely held by the American public, that getting tougher on criminals and giving them stiffer sentences is a promising and realistic way to solve the crime problem. Yet proponents of a third position do not share that belief. In this area, as in discussions of national defense, says criminologist Elliott Currie, "the public is not well served by vague demands for a tougher stance and a demonstration of will, as if weak commitment were the problem."

If a "get tough" attitude is an expression of the public's anger and frustration about violent crime, such feelings do not necessarily lead to a coherent strategy to combat crime, much less to prevent it. Getting even tougher on crime and criminals may satisfy our desire to punish those who have committed serious crimes. But, as proponents of this third perspective conclude, it is the wrong place to look for a solution. In recent years, we have gotten tougher by imposing harsher prison sentences on many criminals. Yet the evidence suggests that this "solution" only exacerbates the problem.

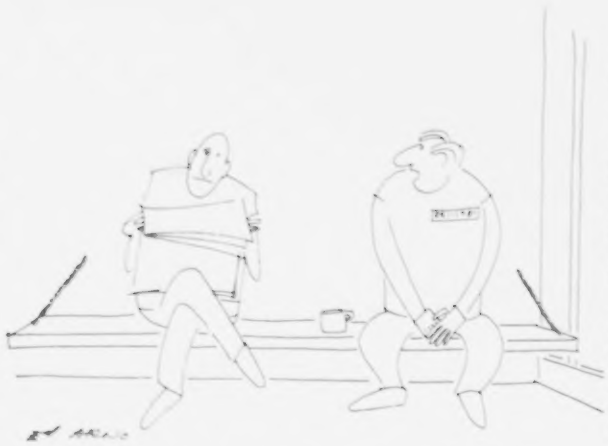
What, then, *should* be done to fight crime? As proponents of this third view see it, if we want to deal with the crime problem, we should follow the example of medicine and develop a more effective strategy of preventive law enforcement. As things stand, most of the debate about crime control focuses on how to deal with those who have already committed crimes. That, as psychiatrist James P. Comer points out, is like mopping up the water on the bathroom floor while continuing to let the tub overflow. To arrive at a more promising solution, we need

"To deal with crime, we have to examine the roots of the problem, not just its symptoms. We will have to take social pathology seriously, and find more alternatives to imprisonment."



Hy Rosen—*Albany Times-Union*, N.Y./Rotheo

CRIME ROOTS U.S.A.



Ed Arno; © 1979 *The New Yorker* Magazine, Inc.

"Which are you—a victim of society or a crook?"

to examine the roots of the crime problem, not just its symptoms.

If the perspective on crime that we just examined explains criminal activity by pointing to individual pathology, this perspective places its emphasis on *social* pathology—on the ways in which American society offers a fertile breeding ground for serious crime. If we really want to understand why America has more violent crime than other societies, we have to look beyond the criminal justice system to those features of our social life that make America different from other industrial nations.

A Sink-or-Swim Society

Many factors in America's culture and history—such as cultural support for a citizen's right to arms—contribute to this nation's predilection for violent crime. But proponents of this view feel that, more than anything else, violent crime is a consequence of adverse social and economic conditions. The extreme poverty in which some Americans live, the disruption of local communities, the absence of adequate jobs for family heads, and a lack of public assistance for families under stress—all of these contribute to the high level of criminal violence.

Consider from this perspective the four youths who were involved in that incident on New York's subways. While some people regard them as a product of a lenient criminal justice system that does little to dissuade youths from the conclusion that crime pays, proponents of this view see them as the product of a long chain of circumstances that ultimately brought them to the subway in search of excitement and gain.

All four of the youths lived in a cramped and run-down public housing project in one of the worst neighborhoods in the Bronx. For anyone growing up there, the prospects are bleak indeed. Education in an inferior inner-city high school holds no promise. And the job market is even less promising. Under these circumstances, it is hardly surprising that they dropped out of school, drifted into drug use and property crime, and finally wound up on that fateful subway ride.

"An accurate diagnosis of the crime problem begins with the recognition that the United States is a peculiarly harsh society. Ultimately, crime is a social problem rooted in racial and economic disadvantage and the erosion of family and community ties."

No one asserts that such unfavorable conditions inevitably lead to a life of crime. But such demeaning circumstances provide a potent breeding ground for crime. People more often resort to crime when they lack certain things: self-esteem, a supportive family and community, the promise of advancement through honest work. To the people who look at the crime problem from this perspective, a society in which many people are deprived of such essentials will of course be unusually prone to crime.

The United States has the widest gap between rich and poor of any industrial nation. Those Americans who have the misfortune of being at the bottom of the income ladder live under greater hardship than their counterparts in other industrial societies.

It is equally significant that countries with lower levels of violent crime have more humane and effective employment

What Deters Crime?

At a time when the United States is resorting increasingly to imprisonment as punishment, it is important to ask about its effects, and whether evidence suggests that punishing criminals by imprisoning them deters crime. Here, in excerpts from Elliott Currie's Confronting Crime: An American Challenge, *is a review of some of the evidence on that question, and an argument for using informal sanctions as an alternative.*

Can we bring down the crime rate by putting more people in prison? Perhaps, but not by much. It is still widely believed that lowering crime by increasing its "costs" ought to be a simple matter, like cutting taxes or voting more money for defense. But the experience of the past decade leads to the conclusion that although imprisonment is all too often an unavoidable necessity, it is not an effective way to prevent crime.

Traditionally, criminologists have distinguished two ways in which prison is said to deter crime. One, general deterrence, is that the threat of going to prison may deter others from becoming criminals. The other, special deterrence, is that the experience of going to prison may deter offenders from committing more crimes when they get out — in other words, going to prison may frighten offenders into going straight. Both are plausible. But each, for a variety of reasons, is limited in its capacity to reduce crimes.

We don't have much research on what goes on in the minds of criminals before they commit crimes. But what we do have suggests that rational planning is the exception rather than the rule, even for crimes involving material gain. The evidence that increasing imprisonment can markedly deter serious crime is murky at best. At the end of the 1960s, the National Commission on the Causes and Prevention of Violence reviewed the evidence on the relationship between sentence length and recidivism. The commission found that longer sentences did not consistently reduce recidivism rates — and sometimes seemed to increase them.

What haunts the idea of special deterrence is the high rate of recidivism — the undeniable fact that many offenders who go to prison continue to commit serious crimes when they get out. High recidivism rates are a troubling, stubborn reminder that if imprisonment deters criminals at all, it clearly doesn't do so consistently. About a third of prison inmates generally, according to recent Department of Justice data, go back to prison after release. For some offenders, the rates are even higher. Among a cohort of youthful serious offenders who did time in California Youth Authority facilities in the 1960s, two-thirds were reincarcerated in a state or federal prison, 70 percent within two years after release. Over half were rearrested for at least one violent crime.

To be sure, incarceration might frighten some criminals into mending their ways. But it might also make others more alienated or "hardened" and teach them criminal skills they didn't possess before. And it would surely hurt their chances of competing successfully for a decent livelihood outside of prison walls. No one who has experienced an American prison could fail to be impressed by their capacity to induce bitterness, to close off legitimate opportunities for inmates on release, and generally to cripple their ability to cope with the demands of the larger world.

As the President's Crime Commission summed it up: "Life in many institutions is at best barren and futile, at worst unspeakably brutal and degrading. The conditions in which inmates live are the poorest possible preparation for their successful reentry into society, and often merely reinforce in them a pattern of manipulation or destructiveness."

New evidence reinforces the belief that imprisonment may backfire for some criminals. One Ohio State study, for example, found that young offenders who did time in a youth prison actually returned to crime *faster* than otherwise similar youth who received less severe treatment.

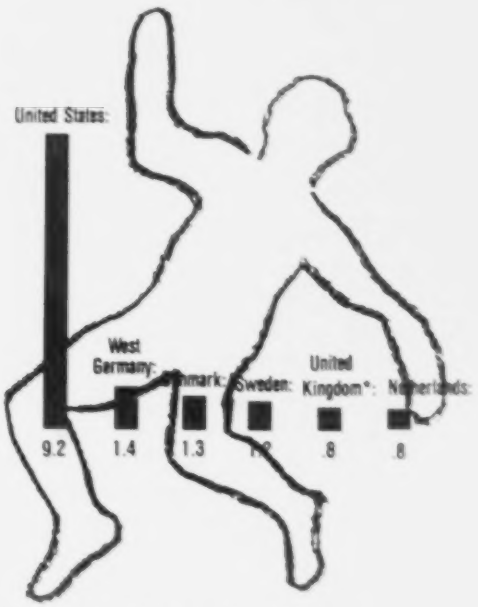
Research suggests that if a general deterrence effect of punishment exists, it is much more likely to come from "informal" sanctions than from the fear of formal punishment. The desire for the respect of society and the local community, the need for the esteem of family and peers, the power of religious or other institutions to include individuals or exclude them, are far more influential deterrents than the threat of punishment by a formal and distant justice system.

The importance of informal sanctions has vital — though neglected — implications for social policy. It suggests that the best deterrent to crime is the creation and maintenance of stable communities in which people may reasonably expect that good behavior will lead to esteemed and rewarding social roles.

Excerpted with permission from Elliott Currie, *Confronting Crime: An American Challenge* (New York: Pantheon, 1985).

Homicide Rates

(Number of homicides per 100,000 people in 1980)

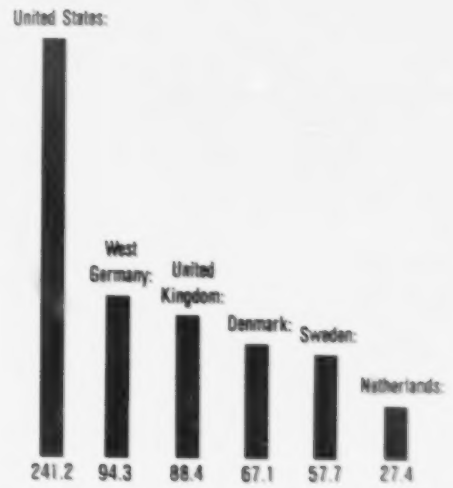


*Excludes Northern Ireland, Scotland

Source: World Health Organization

Rates of Incarceration

(Number incarcerated per 100,000 people)



Source: Helsinki Institute for Crime Prevention and Control, U.S. Department of Justice

policies. Most industrial nations have committed substantial public resources to job training and retraining, and have formulated policies to ensure high levels of employment. In the United States, however, such measures have been generally neglected.

Over the past 15 years, this country has had an exemplary record of creating new jobs, but not for young black men. In 1985, in the midst of an economic boom, only 36 percent of black males aged 18 and 19, and 60 percent of those in the age group 20-24 were employed — a substantially lower employment level than black youths had 15 years earlier. Almost half of all black men aged 16-24 had no work experience at all in 1984.

The National Bureau of Economic Research recently examined the economic lives of young, inner-city black men living in impoverished areas in Boston, Chicago, and Philadelphia. They found that black youths do want to work, but only at jobs and wages that are comparable to those of their white counterparts. Because of increased competition for those jobs from women and other groups, many black youths have trouble getting such jobs. Accordingly, many resort to alternative ways of making a living "on the street," where they become involved in drugs, crime, and other activities that lead them away from honest work. Like the youths involved in the Goetz episode, the problems of most of the black youths in this study were exacerbated by growing up in welfare households which offered little incentive to develop a "work ethic" and few contacts with the labor force.

As proponents of this view see it, given such extremes of poverty and insecurity, the disruption of community and family ties, and the relative absence of support for individuals and families in the face of rapid economic and technological change, it is no wonder this country has a high level of criminal violence. "If we wanted to sketch a portrait of an especially violent society," writes Elliott Currie, "it would surely contain these elements: It would separate large numbers of people, especially the young, from the kind of work that would include them securely in community life. It would encourage policies of income distribution that sharply increase inequality. And it would spur its citizens to a level of material consumption that many could not lawfully sustain."

From this point of view, crime is ultimately a *social* problem rooted in racial and economic disadvantage and the erosion of family and community ties. An accurate diagnosis of the crime problem begins with the recognition that the United States is a peculiarly harsh society. As David Bruck puts it, "If you're going to create a sink-or-swim society, you have to expect people to thrash before they go down." Violent crime represents the "thrashing" of individuals who — like the four youths who approached Bernhard Goetz in that New York subway — saw no chance that they could make it in a society that offered them very little encouragement or assistance.

The Incarceration Binge

From this perspective, the tendency to look to tougher sentences for a solution to the crime problem makes little sense. Far from being "soft" on criminals, the American criminal justice system has actually been unusually tough on crime for over the past decade — and it hasn't worked.

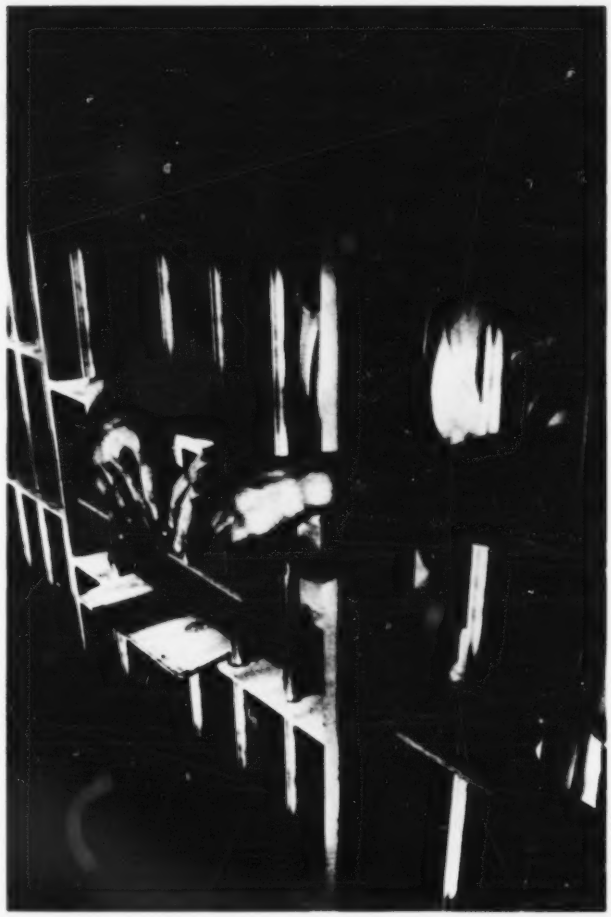
No one who takes this view denies that particularly violent criminals must be locked up, some of them for a long time. Nor do they believe that the prison system should be drastically scaled down. But building *more* prisons will not solve the crime problem. From this view, any assessment of what works to control crime should begin with the recognition that incarceration is cumbersome, expensive, and ineffective.

The American criminal justice system has relied increasingly on incarceration. Indeed, the United States is the most punitive of industrial societies. The simplest measure of our increasing reliance on prison sentences is the national incarceration rate. In 1970, fewer than 200,000 inmates were detained in state and federal prisons. By mid-1984, that inmate population had swollen to 450,000. Over that period, the rate of incarceration in state and federal prisons increased from 96 out of every 100,000 Americans to 195 out of every 100,000. When the jail population is included, the national incarceration rate is now 250 people per 100,000.

In proportion to population, we imprison three times as many people as France and the United Kingdom, four times as many as Italy, Denmark, and Belgium, and roughly eight times as many people as Greece or the Netherlands. Among industrial societies, only South Africa, the Soviet Union, and certain other Eastern European communist regimes such as Poland have higher incarceration rates than our own, and in those countries many prisoners are held for "political" crimes rather than "street" crimes. Yet after a decade of ever-stiffer prison sentences, we continue to have not only the highest rate of incarceration for street crimes in the world, but also the highest level of violent crime.

Consider the fact that, in recent years, the average American male has faced a risk of death by homicide roughly seven times higher than that of the average Englishman, Swiss, or Swede. The disparities for other serious crimes are only slightly less striking. In 1981, the British government surveyed a sample of that country's citizens to determine their experience with crime. The British robbery rate turned out to be about 20 for every 10,000 adults — about one-fourth the rate found in similar American surveys.

No one questions the wisdom of having enough prison cells to detain truly dangerous criminals. But what proponents of this view are concerned about are the other government programs that will be shortchanged if far more prison cells are built in the hope of reducing the crime rate. It costs roughly $75,000 per cell to build a maximum security facility, and an annual



Paul Conklin

"The United States already confines an unparalleled proportion of its citizens in order to achieve even the most minimal level of public safety. Further increases in incarceration would turn the American penal system into a homegrown Gulag of dreadful proportions."

— Elliott Currie

"There is a choice to be made about where to put our resources in order to control crime. Are efforts to prevent crime any less practical than efforts to incarcerate offenders for longer periods in order to guarantee the public safety?"

expenditure of about $20,000 per inmate in operating costs. Such costs might be justified if they accomplished something more than the warehousing of individuals who are dangerous to society. Yet there is little evidence that relying on incarceration has reduced the crime rate. Indeed, crime rates increased at their fastest rate at the same time that incarceration was increasing at an unprecedented rate.

Deeper questions are raised, too, by this strategy of crime control by incarceration. "The United States already confines an unparalleled proportion of its citizens in order to achieve even the most minimal level of public safety," writes Elliott Currie. "Further increases in incarceration would turn the American penal system, already swollen out of all proportion, into a homegrown Gulag of dreadful proportions. The prison already looms as an ugly but pervasive presence in many American communities, especially among disadvantaged minorities. At current rates, every fifth black man in America will spend some time in a state or federal prison, and the proportion is far higher in the inner cities. Further increases in incarceration would decimate these communities and would amount, in practice, to writing off a substantial part of entire generations of minority men."

Alternatives to Incarceration

If incarceration has serious drawbacks as a mode of punishment, what alternatives are there? While recognizing that imprisonment is necessary for an unfortunately large number of serious offenders, proponents of this position hasten to add that much else can be done as well. To begin with, other sentencing alternatives are available, which are less costly and less likely to produce the very behavior they were intended to prevent.

One sentencing alternative is intensive probation. A tougher variety of traditional probation, intensive probation provides strict supervision. It consists of assigning selected offenders (who are not considered dangerous to the community) to probation officers who carry a small case load, and are thus able to provide intensive supervision — helping them with jobs and training, family troubles, and other needs — while holding out the threat of sending offenders back to prison as a powerful incentive to good behavior.

Another alternative is community service sentencing. This involves putting less dangerous offenders to work in productive jobs in such areas as housing rehabilitation. Such sentencing provides both a sanction and an introduction to the rewards of serious and respected work.

Both of these alternatives are cheaper than incarcerating criminals. But they involve a certain risk. Predicting how much danger a particular criminal poses to the community is an inexact science. Thus, permitting offenders to stay in the community — even if they are under intensive supervision — might allow crimes to be committed that could have been prevented by incarceration. But advocates of these alternatives feel that community-based sentencing alternatives pose only minimal danger to the community, while providing a meaningful sanction and an experience that allows offenders to maintain ties to family and community.

Social Programs That Work

But the chief emphasis of this perspective is on programs that address the social conditions which lie at the root of the crime problem. Some recent experiments in controlling crime through well-targeted social programs are quite promising.

Consider, for example, the success of a strategy called "supported work." In the 1970s, the Vera Institute of Justice in New York began a program designed to teach basic job skills to young drug addicts, many of whom were involved in criminal activities to support their habits. The program was called "supported work" because it assumed that these individuals needed extensive help in learning certain fundamentals about the world of work — how to get to work on time, how to avoid arriving there under the influence of alcohol or drugs, how to avoid antagonizing their supervisors. The addicts began with simple jobs and worked up to more difficult ones, until they were

capable of handling the responsibilities of a serious job. The results, which included a marked reduction in arrests and increased employment, were so encouraging that the project was repeated on a larger scale by other agencies.

Evaluation studies showed that the program worked best with addicts and welfare mothers, less well for "hardened" ex-offenders and delinquent youth. One obstacle was that some participants became discouraged because jobs were often unavailable when the training ended. Still, the successes achieved in this program suggest that even some very troubled individuals — those who ordinarily are at high risk to commit crimes — can be taught useful skills and a sense of self-worth, thereby improving their prospects while making it less likely that they would resort to crime.

Other social approaches to crime prevention are promising too. Recent studies that have followed the careers of children involved in preschool programs suggest that they significantly reduce the risk of delinquency and crime. Consider, for example, the results of one program, the Perry Preschool Project in Ypsilanti, Michigan. The program provided a few hours a week of small group instruction to poor children, beginning at age three. The first graduates of that program are now in their twenties. Compared to similar young people who did not participate in the program, they did better in school, were more likely to hold steady jobs and less likely to be on welfare. Significantly, they were also less likely to be arrested or convicted of a crime.

These are not ill-conceived, pie-in-the-sky experiments, but carefully tested strategies which have proved to be successful. While their costs are substantial, the fact that they prevent crime later on makes them cost effective in the long run. The Perry preschool project, for example, was estimated to save substantially more money than it cost, because it led to less dependency on welfare, fewer child support payments, and a savings in tax dollars that otherwise would have been spent on court costs and the correctional system.

An Anti-Crime Employment Policy

Programs such as these help to reduce the crime rate, and do so in ways that are consistent with deeper social values. They help people to be self-sufficient. They integrate individuals into the life of the community rather than separating people from the community as prisons do. Still, no program can be expected to go very far toward solving the crime problem in a society where so many people cannot find work. It does little good to put youths in a job training program if, upon completing that program, they return to a community with a youth unemployment rate of 50 percent.

Work roles are one of the basic ways in which individuals are tied into the lives of their communities. When work is unavailable, that bond is seriously weakened. So, as proponents

Intensive Care for High-Risk Youths

Many people believe that, short of launching ambitious and enormously expensive social programs to alleviate poverty and create jobs, there is little hope of preventing crime. However, advocates of community crime prevention efforts point to programs which are both promising and cost effective.

In a recent study, historian Steven Schlossman described one innovative program of this sort, the Chicago Area Project (CAP), which was started in the 1930s. The project's purpose was to work closely with high-risk youths — both particularly troubled youngsters who do not yet have a criminal record, and those who had been arrested for a first offense.

CAP represented an intensely personal response to these troubled youths. It pioneered "curbstone counseling" — the use of local young adults whose job was to stay in close contact with these young people, to provide advice about how to stay out of trouble, and how to handle problems at school, at work, or with their families. CAP also closely supervised young parolees, finding ways for them to reenter the community, and placing them in jobs. It amounted, in Schlossman's words, to providing "aggressive care" for youths who were susceptible to crime.

Recently, programs which resemble the Chicago Area Project have been initiated in many of America's inner-city neighborhoods.

One example is the Argus Learning for Living Center in the South Bronx. The program stresses the development of basic skills such as reading, by providing intensive tutoring. It also provides counseling from adults whose "street" backgrounds resemble those of the youths.

To place youths in constructive and rewarding jobs, the Argus staff works intensively with them to develop marketable skills, to build self-esteem and teach positive attitudes.

Such close, caring attention doesn't come easy. It requires what one Argus staffer calls "blood, sweat, tears, and love." It also takes time and money. But when troubled youths are persuaded to become law-abiding and productive citizens, the result justifies that considerable investment of time, effort, and money. In the words of Lynn Curtis, director of the Eisenhower Foundation, which helps to sponsor Argus, this program and others like it work because they motivate young people to re-channel their energy into respectable and productive activities. And, says Curtis, "They do so for much less than the cost of letting a youth commit a crime and then imprisoning him."

Participants in a summer job program sponsored by the Mobil Foundation to provide work opportunities and community service.

"The keystone of a crime-control program is an anti-crime employment policy. Such a policy has to provide more than temporary work designed to keep kids off the street. It should link young people with stable work roles which provide a reward for hard work and playing by the rules."

of this third perspective conclude, the keystone of an anti-crime program has to be an anti-crime employment policy. Such a policy has to provide more than temporary, stopgap work designed mainly to keep kids off the streets. Instead, it should link young people with stable adult work roles which provide a livelihood over the years, and a reliable reward for hard work and playing by the rules.

Considering the costs it would entail, a national commitment to full employment is often regarded as well intended but unrealistic. But, as Elliott Currie points out, those who propose dealing with the crime problem by relying increasingly on incarceration are apparently willing to commit a sizable amount of money to prison construction. If spent in other ways, that same amount would go a long way toward dealing with poverty and providing jobs to many young people. Currie calculates that tripling the current prison population in the hope of reducing crime by 25 percent would cost $70 billion just for construction, and an additional $14 billion in annual operating costs. As he points out, those tax dollars might be used instead to raise the income of all the poor families in America above the poverty line, and give a million young people jobs paying $7 an hour.

So there is a choice to be made about where to put our resources in order to control crime, and whether efforts to prevent crime are any less practical than efforts to incarcerate offenders for longer periods in order to guarantee the public safety.

Preventing Crime, or Reacting to It

This third choice amounts to a fundamentally different perspective — both in the diagnosis of the crime problem it offers and its prescription. From this perspective, a prison-based policy which rests on the conviction that we have to "get tougher" on crime is a costly delusion. It rests on the false assumption that fear of prison significantly deters criminal behavior and that detaining people for longer sentences in prisons is likely to reduce the level of their criminal activity. An incarceration binge is the wrong approach to the crime problem, both endless and hopeless, and as likely to encourage violence as to reduce it.

Advocates of this perspective acknowledge that we should "get tough" with brutal people. But if we are to come to grips with crime, we have to do more than that. Tinkering with the criminal justice system alone can do little to prevent crime. The law enforcement system was never intended to mop up the human consequences of other, untended social pathologies. Any society that maintains harsh inequalities and offers little more than minimal assistance to needy individuals and families will inevitably have a high crime rate. We can choose to mop harder to try to make a difference in the level of the flooding. Or we can do something about the open faucet by addressing the social causes of crime.

5

You Be the Judge

> **"Various proposals about how to deal with crime suggest different approaches, and different uses of public resources. Which one reflects the various values we hold, including the value we place on our own safety?"**

Among its indexes of the crime problem, the Justice Department maintains a "crime clock" — a measure of how often violent crime occurs in the United States. For 1985, that clock showed that there was an aggravated assault every 44 seconds, a robbery every 73 seconds, a rape every 6 minutes, and a murder every 28 minutes. The figures vary slightly from one year to the next. But one thing remains the same: America's dubious distinction as the most violent of industrial nations.

Many discussions of crime consist of little more than pointing the finger of blame for that startling fact. Some people blame a lax criminal justice system, or procedural rules which give criminals the upper hand over law enforcement officials. Others regard the high crime rates of recent years as a sign that society as a whole — particularly families, churches, and community groups — no longer attaches much importance to teaching discipline and self-restraint.

Still others, such as criminologist David Bayley, look at this unsavory seam in American life and conclude that it is the inevitable consequence of values Americans prize, such as individualism, mobility, and a suspicion of authority. As Bayley concludes, "The United States may have high levels of criminality because it is inhabited by Americans." In which case, it seems reasonable to conclude, there is little that can be done about it.

However, most people are not content to end the discussion on that note, or to conclude that the disturbingly high level of crime in American life results from forces that are beyond the reach of public policy. They believe that, if certain changes are made, the crime rate *could* be lowered. The real disagreement is over what can and should be done about it.

Diagnosis and Prescription

In treating social ills, no less than medical ailments, the proper prescription requires an accurate diagnosis. As we have seen, the various parties in this debate offer distinctive diagnoses of why people commit crime. Some people blame a porous justice system that provides no effective deterrent to crime. Others insist that most serious crime is committed by a relatively small group of incorrigibles who cannot be deterred. Those who offer a third explanation move beyond individual pathology to social pathology, and insist that the roots of violent crime lie in social conditions that predispose certain individuals to lives of crime.

Whichever of these views you choose, it is likely to affect your view of what should be done. If, for example, you agree with the second of these views that crime stems from individual pathology rather than from social conditions such as poverty, bad schools, or unemployment, you are unlikely to conclude that any social program — such as a commitment to an anti-crime employment policy — will have a significant effect on crime.

"Different proposals are being put forward with the expectation that they will significantly reduce crime. Choices have to be made about targeting resources to areas of genuine need, and deciding how tax dollars can be put to their best use."

Even the best of diagnoses, of course, does not necessarily lead to a surefire prescription. Few people are bold enough to assert that they have the solution to the crime problem, or that their anti-crime program would stop violent crime tomorrow, or next year. But different proposals are being put forward by proponents of each of the three positions with the expectation that they will significantly reduce crime. These proposals lead in very different directions — both in how we treat offenders and in the strategies we pursue to prevent crime. And they entail very different costs. So let us review these three proposals.

Getting tougher with all criminals in order to convey the message that society will not tolerate such behavior is a straightforward strategy for reducing violent crime, and a strategy that seems promising to many people. But particularly since we insist upon maintaining humane standards in our prisons, this is an expensive strategy. Stepping up incarceration to the point where it would reduce the crime rate would cost billions of dollars. Moreover, if some of the current constraints on the criminal justice system are removed to make apprehension and sentencing easier, this approach is likely to result in certain infringements on individual freedoms — both those of individuals suspected of crime and those of the population as a whole.

To proponents of the second choice, a more realistic alternative is to concentrate law enforcement resources on a relatively small number of chronic criminals, and to acknowledge that with such incorrigibles we have no alternative but to lock them up for extended sentences. Since it would put certain offenders behind bars for much longer periods, this too would be a costly proposal — although some of the costs might be offset by giving shorter sentences to less dangerous criminals. And it raises certain ethical issues. Is it just to sentence offenders not on the basis of what they have done, but on the basis of what we think they might do?

Though supporters of our third choice agree that extended prison sentences may be the only answer for particularly violent criminals, they insist that there are other things that should be done as well. Particularly for delinquents, they recommend alternative punishments that are less likely than prison sentences to lead to a criminal career. They argue particularly for well-targeted programs that ameliorate the social conditions which frequently lead to crime. Putting these ideas into practice in more than a few communities would be quite expensive. These expenses are particularly hard to justify at a time when many social programs have been cut back, and when many believe that government can do little to alleviate poverty or sharp inequalities. And since it advocates community-based sentencing alternatives, this choice entails certain risks to public safety as well.

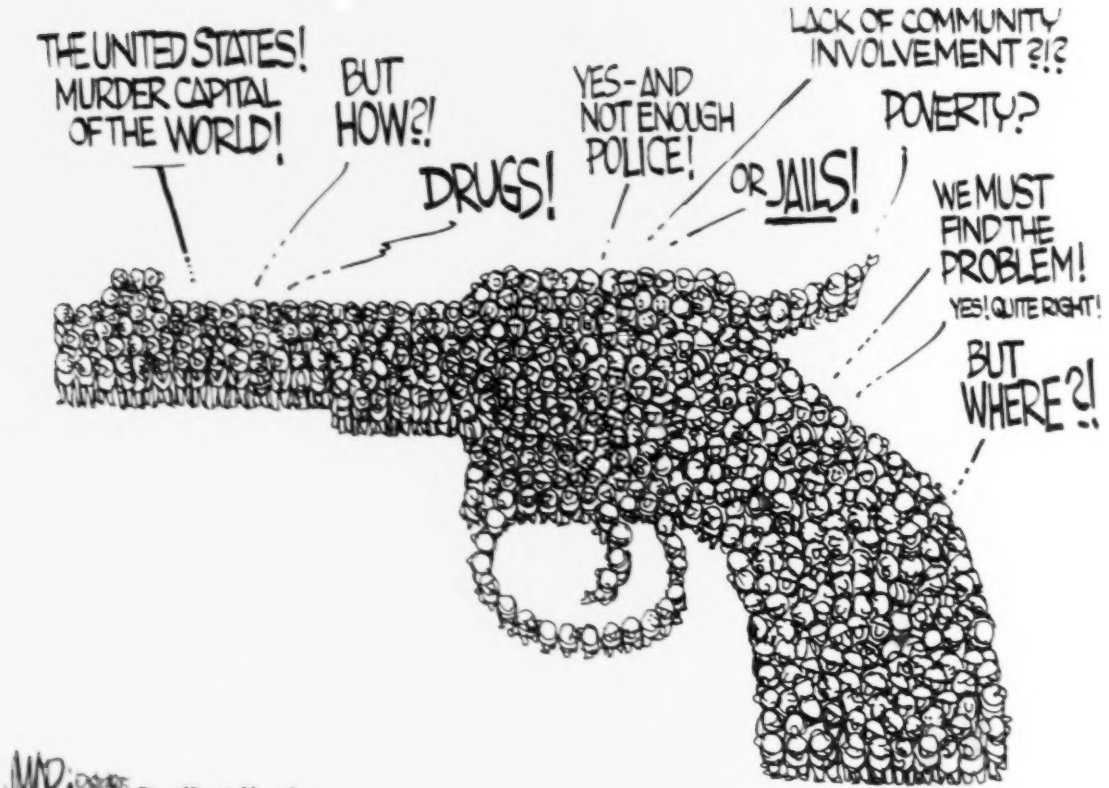
These three choices raise not only technical questions about what can be done to deter crime, but moral and political questions about what should be done. These questions in turn are related to larger disagreements about the kind of society we want for ourselves and our children.

Reaching a Verdict on Crime

When asked to choose among these alternatives, people commonly respond by saying that we should pursue all three of them — that we should step up enforcement and give harsher sentences, identify and incarcerate the relatively small group of incorrigibles, *and* make a serious effort to deal with the social conditions that now provide a breeding ground for crime.

But a choice among strategies is necessary. Recent discussion of the federal deficit underscores the fact that there are sharp limits on public resources. Accordingly, choices have to be made about how tax dollars can be put to their best use. If our goal is to reduce the crime rate, what is required is effective targeting of resources to areas of genuine need. This means reaching some consensus about what parts of the system are weak, and making a judgment about where additional resources are likely to make a difference.

If you ask corrections officials what needs to be done with the criminal justice system, many respond that crowding of



correctional institutions is the most immediate concern. That view is widely shared not only by corrections officials, who bear the immediate brunt of the problem, but by judges and prosecutors, who find that lack of prison space reduces their sentencing options; by police, who fear that too many dangerous offenders are being released and let out on the streets; and by parole officers, who face swollen case loads as a result of early release of offenders.

The question seems to be where to find the resources to build new or expanded facilities. But what the public needs to consider is a more fundamental question. What direction should the criminal justice system take? What strategy seems most promising as a way of controlling crime?

Over the past few years, the American criminal justice system has resorted to stiffer punishment and to imprisonment as the punishment of choice. But is this the best course? To answer that, we need to think seriously about what prisons accomplish, and reach some conclusions about their appropriate role in crime control. We need to think about how prison space should be allocated, and the principles according to which offenders should be sentenced. We need to think, too, about sentencing alternatives, and whether sufficient resources are devoted to crime prevention.

As we confront the problem of violent crime and consider the alternatives in responding to it, the question is which direction best reflects the various values we hold — including the value we place on judicial fairness, on swift and certain justice, and on community safety.

In the current confusion about how to respond to violent crime, only one thing is clear, and that is the public's fear of crime and its dissatisfaction with much of what is being done by the criminal justice system. Under such circumstances, many people insist upon a more concerted effort to combat crime—and elected leaders promise just that. It is easy, as British historian R. H. Tawney once observed of government officials, for them to "set up a new department, appoint new officials, and invent a new name to express their resolution" to do things differently. "But unless they take the pains not only to act, but to reflect," Tawney cautioned, "they end by effecting nothing." If we are serious about coming to grips with crime, that process of reflection has to involve not just elected leaders and law enforcement officials but the broader public as well.

For Further Reading

For a comprehensive picture of crime and criminal justice in the United States, see *Report to the Nation on Crime and Justice* from the U.S. Department of Justice, 1983. James Q. Wilson's *Thinking About Crime* (New York: Basic Books, 1983) contains a thoughtful analysis of such topics as criminal penalties, incapacitation, and rehabilitation. In a more recent volume, *Crime and Human Nature* (New York: Simon and Schuster, 1985), Wilson and his colleague Richard J. Herrnstein review the literature on the causes of crime. The book contains a new and controversial emphasis on the role of biological factors. For a recent discussion that takes issue with Wilson's views, and argues for a more socially-oriented anti-crime strategy, see Elliott Currie's *Confronting Crime: An American Challenge* (New York: Pantheon, 1985). For a description of new directions in community-based crime prevention, see Lynn Curtis (ed.) *American Violence and Public Policy* (New Haven: Yale University Press, 1985). Lillian Rubin's book, *Quiet Rage: Bernie Goetz in a Time of Madness* (New York: Farrar, Straus & Giroux, 1986) probes American responses to crime in an illuminating account of the Goetz episode.

On the matter of how criminals should be punished, see Ernest Van den Haag, *Punishing Criminals: Concerning A Very Old and Painful Question* (New York: Basic Books, 1975), Andrew Von Hirsch, *Doing Justice: The Choice of Punishments* (New York: Hill and Wang, 1976), and Norval Morris, *The Future of Imprisonment* (Chicago: University of Chicago Press, 1974). For a recent book on the effects of jails and prisons, see John Irwin, *The Jail: Managing the Underclass in American Society* (Berkeley: University of California Press, 1985). In their report entitled *Selective Incapacitation* (Santa Monica: Rand Corporation, 1982), Peter Greenwood and Allan Abrahamse discuss how high-rate offenders can be identified.

Acknowledgments

Many people participated in the process of deciding upon this year's topics, discussing how they should be approached, preparing the materials, and reviewing their content. Once again this year, David Mathews and Daniel Yankelovich provided both guidance and support. Jon Kinghorn played an indispensable role in keeping the various parts of this far-flung network in touch with one another, and providing assistance of many kinds to the convening institutions and forum leaders.

We owe a special debt to Elliott Currie, for his advice and detailed help in preparing the manuscript, and for his permission to reprint various passages from *Confronting Crime: An American Challenge*.

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NATIONAL ISSUES FORUM

2. Crime: What We Fear, What Can Be Done

Now that you've had a chance to read the book or attend the discussion, we'd like to know what you think about this issue. Your thoughts and feeling about this issue, along with those of thousands of others who participated in this year's forums, will be reflected in a summary report prepared for policymakers and elected officials. Because we're interested in knowing how you've changed your mind, some questions are the same as those in the first questionnaire.

1. To what extent does each of the following contribute to the high rate of violent crime?

	Major Factor	Minor Factor	Not a Factor	Not Sure
a. Unemployment and poverty	☐	☐	☐	☐
b. The breakdown of family and social values	☐	☐	☐	☐
c. Light sentences for repeat offenders	☐	☐	☐	☐
d. Overburdened courts and prisons	☐	☐	☐	☐
e. Too few police	☐	☐	☐	☐

2. What priority should each of the following be given in the effort to control crime?

	High Priority	Lower Priority	Not a Priority	Not Sure
a. Make punishment swift and certain	☐	☐	☐	☐
b. Lock up the most dangerous criminals for longer periods of time	☐	☐	☐	☐
c. Address the root causes of crime, such as poverty, unemployment, and poor schools	☐	☐	☐	☐
d. Find alternatives to prison in order to teach valued job skills and attitudes to offenders	☐	☐	☐	☐

3. Here are some proposals that have been suggested for reforming the criminal justice system. For each, check whether you agree or disagree:

	Agree	Disagree	Not Sure
a. Make greater use of supervised probation and community service sentencing, such as cleaning up the parks	☐	☐	☐
b. Sentence people according to the danger they pose to the community and not according to the severity of the crime	☐	☐	☐
c. Give the police greater freedom in gathering evidence and arresting suspects	☐	☐	☐
d. Sentence juveniles convicted of serious crimes the same way adults are sentenced	☐	☐	☐
e. Impose mandatory minimum sentences for all violent crimes	☐	☐	☐
f. Provide intensive support for first-time juvenile offenders, such as counseling, skills training and employment	☐	☐	☐

(over)

4. Here are some things people have been saying about crime and criminal justice. For each, check whether you agree or disagree.

	Agree	Disagree	Not Sure
a. Too few criminals are sent to prison	☐	☐	☐
b. Prisons just make people into more hardened criminals	☐	☐	☐
c. There is too much concern with the rights of criminals and too little with law and order	☐	☐	☐
d. It's too expensive to build enough prisons for all the people that are convicted of serious crimes	☐	☐	☐
e. It's not realistic to think that we can reduce crime by expanding social programs	☐	☐	☐

5. Which of these age groups are you in?

Under 18 ☐
18-29 ☐
30-44 ☐
45-64 ☐
65 and over ☐

6. Are you a

Man ☐
Woman ☐

7. What is your zip code? _____

8. We'd like to know whether, as you have read this book and attended the forums, you have changed your mind about crime and what we should do about it. How, if at all, did you change your mind?

9. If there were just one message you could send to elected leaders on the topic of crime and crime control, what would it be?

Please hand this questionnaire to the forum leader at the end of the session, or mail it to the National Issues Forum at 5335 Far Hills Avenue, Dayton, Ohio 45429.

"I know no safe
depository of the
ultimate powers
of the society but the
people themselves;
and if we think
them not enlightened
enough to exercise
their control with a
wholesome discretion,
the remedy is not
to take it
from them, but to
inform their discretion
by education."

Th. Jefferson